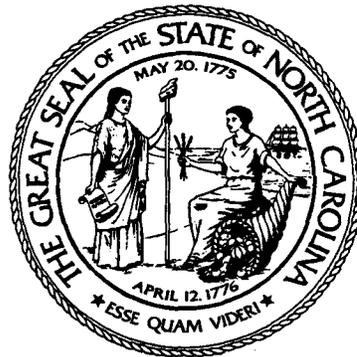


LEGISLATIVE RESEARCH COMMISSION

GUARDIAN AD LITEM PROGRAM



REPORT TO THE
1997 GENERAL ASSEMBLY
OF NORTH CAROLINA

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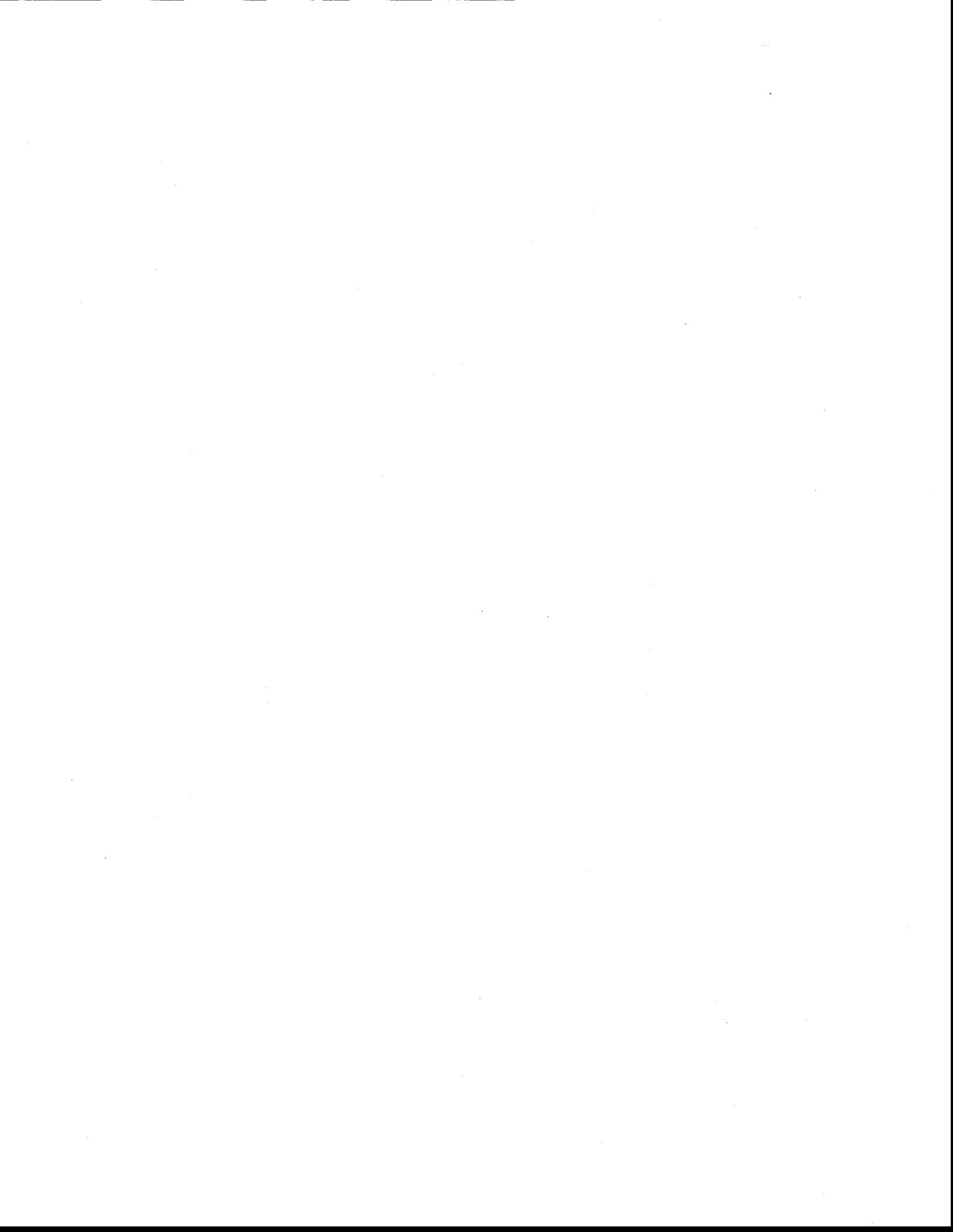
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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601



January 15, 1997

TO THE MEMBERS OF THE 1997 GENERAL ASSEMBLY (REGULAR SESSION 1997):

The Legislative Research Commission herewith submits to you for your consideration its final report on the GUARDIAN AD LITEM PROGRAM. The report was prepared by the Legislative Research Commission's Committee on GUARDIAN AD LITEM PROGRAM pursuant to G.S. 120-30.17(1).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Harold V. Brubaker", written over a horizontal line.

Harold V. Brubaker
Speaker of the House

A handwritten signature in cursive script, appearing to read "Marc Basnight", written over a horizontal line.

Marc Basnight
President Pro Tempore

Cochair
Legislative Research Commission



1995-1996

LEGISLATIVE RESEARCH COMMISSION

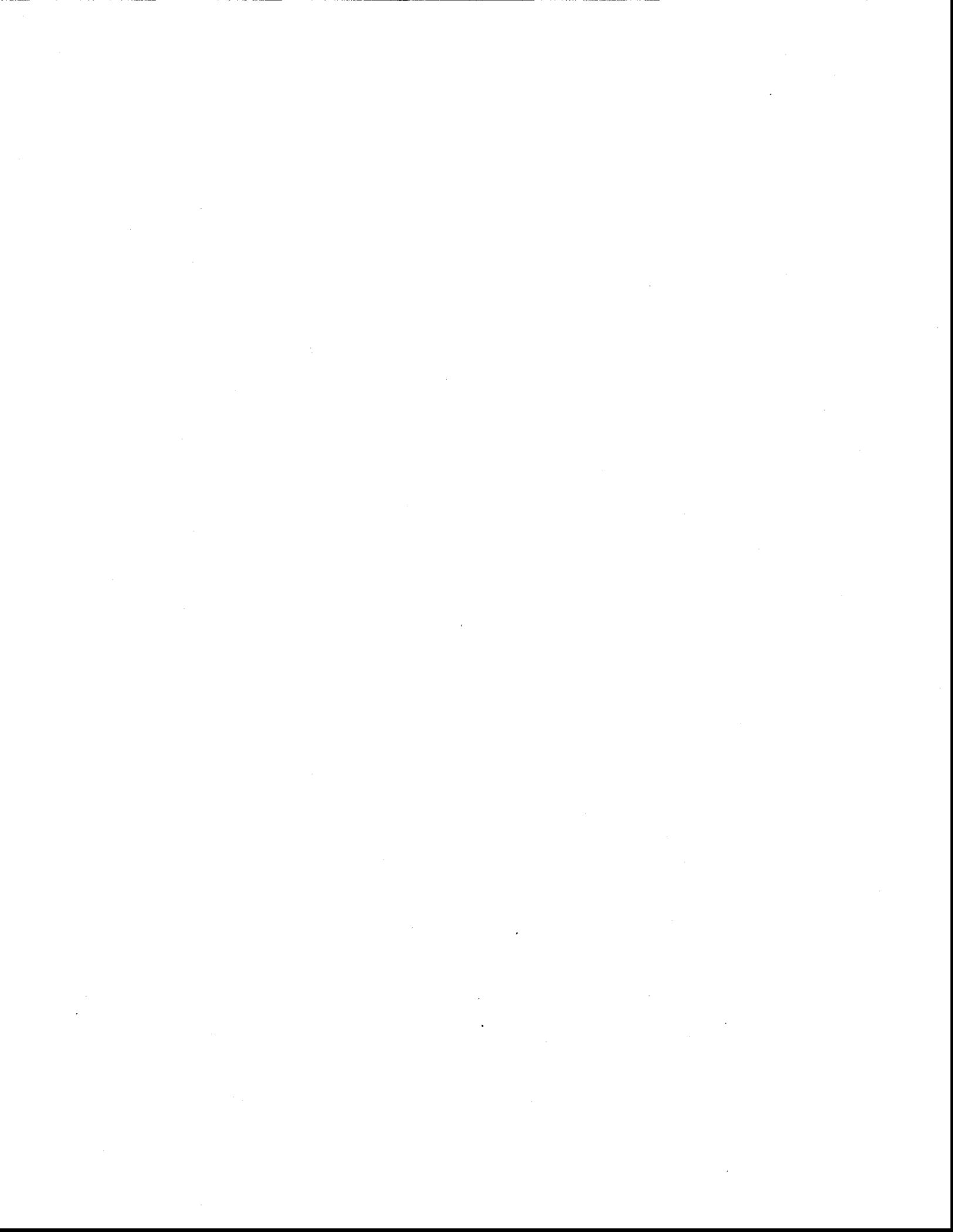
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Senator Frank W. Ballance, Jr.
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Senator Henry McKoy
Senator J. K. Sherron, Jr.
Senator Ed N. Warren

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Rep. Larry Linney
Rep. Edd Nye
Rep. Gregory J. Thompson
Rep. Constance K. Wilson

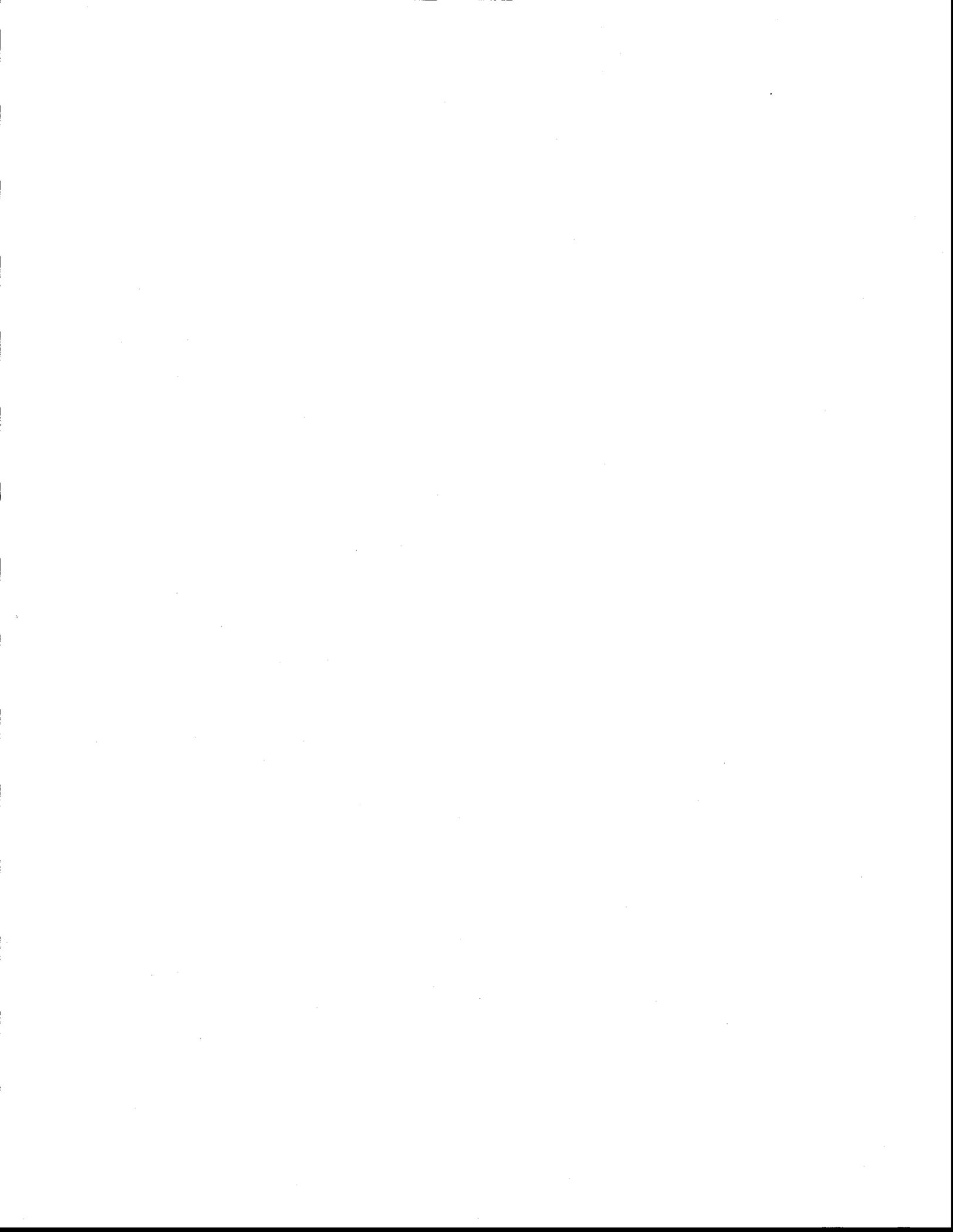


PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1995 Session and 1996 Sessions, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of the Guardian Ad Litem Program was authorized by Section 21.12 of Chapter 324 of the 1995 Session Laws (First Session, 1995) (**Appendix A.**) The Legislative Research Commission grouped this study in its **Family And Juvenile Law** area under the direction of Representative Edd Nye. The Committee was chaired by Senator **Frank Ballance, Jr.** and Representative **William S. Hiatt.** The full membership of the Committee is listed in **Appendix B** of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.



COMMITTEE PROCEEDINGS

The LRC Guardian Ad Litem (GAL) Study Committee met seven times during 1996. Four times prior to the short session of the 1995 General Assembly (January 5, February 9, March 15, and April 12), and three times after the short session (November 15, November 25, and December 20).

At its first meeting the Committee reviewed its charge from the General Assembly (**Appendix A**). The Committee's response to each of the matters it was charged with studying may be found in **Appendix C** of this report. After reviewing its charge the Committee heard presentations about the purpose and mission of the Guardian Ad Litem (GAL) Program. These presentations were made by Judge Jack Cozort, Acting Director of the Administrative Office of the Courts, and Ilene Nelson, Administrator of the GAL Program. Judge Cozort told the Committee that one of the fastest growing segments of the court's workload is that related to domestic cases, and that one of the largest group of cases in this segment involves juveniles. Judge Cozort pointed out that with respect to these cases, judges must base their decisions on what is in the child's best interest. In making this decision, the judge relies heavily on information and recommendations provided not only by the social services workers involved in the case, but also by the guardian ad litem volunteer and GAL attorney who represent and advocate solely for the child's interests. Ms. Nelson informed the Committee on how the GAL becomes involved in an abuse and neglect case and the duties involved in representing a child in that case.

Also at the January meeting, committee staff reviewed statutory and budgetary actions taken by the 1995 General Assembly pertaining to the GAL program, and the implementation and effects of those changes on the program. Staff informed the Committee that the General Assembly authorized a budget **reduction** of \$505,263 in 1995-96 and a **reduction** of \$490,623 in 1996-97 in the GAL program. These reductions resulted in capping attorney fees and limiting use of attorneys. The General Assembly also amended G.S. 7A-586 to provide that appointment as guardian ad litem shall terminate at the end of two years except where reappointment is made by the presiding judge for good cause. (1995 S.L., Ch. 324, Sec. 21.13.)

Over the next three meetings the Committee heard presentations on the following topics:

- (1) **DSS Role in Abuse and Neglect Cases:** this discussion involved presentations from DSS program administrators in Child Protective Services and Foster Care Services. The presentations covered the legislative mandate to protect children who are alleged to be abused, neglected, or dependent, and the system in place for carrying out that mandate. Detailed information was provided to the Committee on the qualifications and training of child welfare social workers, statistics on the number of abuse and neglect reports for 1994-95, and foster care and adoption services. The Committee also heard from Ms. Gwendolyn Wilson, Director of Social Services in Wayne County. Ms. Wilson reported that a lot of positive things had happened as a result of the GAL program in Wayne County, including GAL involvement in DSS child protection teams, fatality review teams, and agency planning teams.
- (2) **GAL Program Staffing, Organizational Structure, and Volunteer Training:** this discussion provided information on: number of cases handled by GAL volunteers and attorneys; GAL program personnel grades, compensation, and supervisory duties; training of volunteers; compensation of attorneys; and the impact of reductions in attorney fees and retainers. (See Appendix D.)
- (3) **Case studies:** A GAL supervisor and DSS supervisor in Alamance county worked together to select and present to the Committee three actual case studies involving children who had been abused and had received protective services from DSS and GAL. Also testifying at this discussion were a district court judge, two attorneys who represent parents in child abuse cases, and a GAL attorney. Judge Kent Washburn, Chief District Court Judge in Alamance County, told the Committee that although DSS workers are highly competent and professional, they are bound by policy considerations and rules that are not binding upon GAL program volunteers and attorneys. Thus, the GAL volunteer and attorney offer an opinion and recommendations to the judge that are independent of State agency constraints and that focus exclusively on the interests and perspective of the child. Also, there are sometimes communications problems between DSS and parents because of their adversarial positions; GAL volunteers and attorneys can sometimes bridge that communication gap by assisting in negotiations among the parties.

- (4) **Role of Attorneys in Guardian Ad Litem Proceedings:** Janet Mason, Institute of Government, was invited to speak to the Committee about the various parties who are usually represented by counsel in child abuse proceedings, the nature of the representation, and whether the State is required to provide representation to indigent parents and to the child in these proceedings. The Committee was informed that in a given case, as many as four attorneys could be representing the parties involved. One attorney represents the department of social services, one attorney may be appointed for each of the parents (if the parents are in an adversarial position to one another), and one is appointed for the child through the GAL program. Separate counsel is needed for each party whose interests may be adversarial to those of another party in the case. Under State law, a juvenile under the court's jurisdiction has a right to counsel, G.S. 7A-584, and a right to appointment of a guardian ad litem in abuse and neglect cases, G.S. 7A-586. Also, in cases where a petition alleges that a juvenile is abused, neglected, or dependent, the parent has a right to appointment of counsel if the parent is indigent, G.S. 7A-587.
- (5) **Court Appointed Special Advocates (CASA) Programs** in other states: Michael Piraino, Director of National CASA, gave the Committee an overview of his organization. National CASA is a nonprofit membership organization for all volunteer guardian ad litem programs in the country. National CASA was organized in 1982 to promote, assist, and support the development of quality guardian ad litem programs throughout the United States. Among the resources National CASA offers member states are: development of minimum national standards, recommended management practices, and a code of ethics; dissemination of a 40-hour comprehensive training curriculum for volunteers; and technical assistance in the areas of fundraising, public relations, and program start-up. CASA currently has membership in 42 states and is attempting to expand nationwide.
- (6) **Request for formal opinion:** Based on a situation that was brought to the Committee's attention, the Committee directed that an advisory opinion be obtained on the following question: *Must a district attorney investigating a criminal matter obtain the consent of the GAL attorney in the juvenile matter before the district attorney may question the GAL*

volunteer about information the volunteer obtained during her investigation of the juvenile matter? The State Bar issued an opinion stating that *the district attorney must obtain the consent of the GAL attorney.* The opinion of the State Bar on this matter is attached as **Appendix E** to this report.

At its final meeting before the convening of the 1996 short session, the Committee discussed its plans for future meetings. Among those plans was development of a survey of targeted groups involved in Guardian Ad Litem cases. The survey was to be developed after the short session. Groups to be surveyed were district court judges, county departments of social services, attorneys who represent departments of social services in abuse and neglect proceedings, GAL volunteers, and GAL attorneys. The purpose of the survey was to obtain information on how the GAL program is working in local communities. The survey was mailed to the target groups in September, 1996 with a response date of October 4, 1996. Results were tabulated and analyzed by staff and presented to the Committee at its November 15 meeting. The survey and accompanying analysis is attached at **Appendix F** of this report.

On November 15, 1996 the Committee held its first meeting after the 1996 short session. At this meeting staff presented the results of the survey. Survey results had been mailed to Committee members and to GAL and DHR representatives in advance of the meeting, and GAL and DHR personnel were given an opportunity to comment on the survey results at the meeting.

Also at the November 15 meeting presentations were made to the Committee pertaining to accomplishments of the GAL program during the 1995-96 fiscal year and plans for improvements, and a review by staff of funding issues for the GAL program. These funding issues include a review of GAL budget allocations, expenditures for legal representation, cost savings or efficiencies pertaining to GAL staffing, and policy options that may impact on the GAL program's mission and funding.

The Committee's November 25 meeting was scheduled primarily as a work session for the Committee to discuss and decide on findings and recommendations for its final report. Also at this meeting, at the request of a committee member, the Committee heard testimony from Ms. Susan Mills, a foster parent who adopted two of her foster children, one of whom had been represented by the Guardian Ad Litem program. Ms. Mills and her daughter told the Committee of their experience with the foster care and adoption system and testified to how beneficial it was to their family to have received GAL

services. For the remainder of the meeting the Committee discussed the information it had received as a result of its study and directed staff to draft its final report based on the Committee's decisions. The Committee held its final meeting on December 20, 1996. The Committee reviewed the draft and approved the report, as amended.

FINDINGS AND RECOMMENDATIONS

FINDING ONE: In 1983 the General Assembly established the Office of Guardian Ad Litem Services to provide services in accordance with G.S. 7A-586 to abused, neglected, or dependent children. (1983 S.L., Ch. 761, Sec. 160; 1987 S.L., Ch. 1090, Sec. 7.). Under G.S. 7A-586, as amended in 1995, in every case where a nonattorney is appointed as a guardian ad litem, an attorney must be appointed to assure protection of the child's legal rights through the dispositional phase of the proceedings, and must also be appointed after disposition when necessary to further the best interests of the child. The Committee finds that this requirement to appoint counsel is indicative of the General Assembly's commitment to protecting the legal rights of children who have been abused and neglected, and is also recognition by the General Assembly that such protection may be necessary beyond the dispositional phase of a given case. Recent reductions in funding for the GAL program may jeopardize the program's ability to sufficiently and adequately secure counsel to represent all of the abused and neglected children entitled to representation under State law. The Committee finds, however, that these reductions have only been in place since 1995 and more time is needed to fully realize the effects of the reductions. The Committee also finds that reductions in costs may be realized through improved program administration and through improvements in the court process that would reduce time spent on hearings.

RECOMMENDATION ONE: When considering the budget of the Guardian Ad Litem program for the 1997-99 fiscal years, the General Assembly should ensure that sufficient funds are appropriated to enable the GAL program to provide the legal representation necessary to fully protect the rights of abused, neglected, and dependent children as required under G.S. 7A-586. GAL Program administrators should take steps to improve administration of the Program at the local level in order to maximize efficiency in attorney services.

FINDING TWO: The Committee finds that the key to the success of the Guardian Ad Litem program in providing services to all abused, neglected, or dependent children in North Carolina lies in its ability to recruit, train, and retain a force of volunteers committed to the program, its mission, and the best interests of children. The Committee further finds that recruitment, training, and retention of an effective and efficient volunteer force requires an administrative staff that is skilled in supervision and organization, and has a workforce of a manageable size. Overall, the GAL program's staff-to-volunteer ratio, 1:31.5, is comparable to the National CASA standard of 1:30. However, there are some districts under the GAL program where staff are handling the cases for over 50% of the children because of the low number of volunteers in those districts. In almost 1/3 of the districts 40% or more of the children are being represented by staff/attorneys rather than by volunteers, also due to problems in recruitment of volunteers.

The Committee finds that increasing the number of volunteers statewide would substantially improve efficiencies in the administration of the GAL program and thereby effect a cost savings to the State. Finally, the Committee finds that providing guardian ad litem services to children through volunteers rather than paid staff saves money the State might otherwise have to spend to maintain its commitment to protect abused, neglected, and dependent children. For example, GAL staff reported to the Committee that volunteers contribute on average 260 hours a year to the GAL program. This number is equivalent to 443 full time staff positions which, if paid at the compensation level of a Social Worker I, would equal \$15,990,000.

RECOMMENDATION TWO: When considering the GAL's budget for the 1997-99 fiscal years, the General Assembly should ensure that sufficient funds are available to enable the program to improve its recruitment of volunteers, to ensure that volunteers are adequately trained, and to develop strategies for retaining a full complement of volunteers in every district in the State.

FINDING THREE: The Committee finds that as a result of 1995 budget reductions, the Administrative Office of the Courts (AOC) has restructured the way GAL attorneys are paid. Instead of paying the GAL attorneys at an hourly rate of \$40 per hour for the amount of time spent on a particular case, the GAL attorney is now paid a flat rate of \$120 per case, despite the amount of time involved, to

handle the case through disposition. Legal services required after disposition are handled through retainer contracts based on the caseload size for which the attorney is expected to be responsible during the year.

The Committee finds that as a result of the payment change, many experienced GAL attorneys have left the GAL program, most often citing the comparative low payment rate as the reason. Accordingly, AOC is having to hire less experienced attorneys who are willing to work at the lower rate of pay.

In order to assist these less experience attorneys with legal questions often unique to guardian ad litem matters, and in order to reduce the amount of time GAL attorneys have to spend on legal research that is often duplicated throughout the state in the GAL program (thereby raising the effective hourly rate of compensation), the Committee finds that an attorney located in the AOC GAL office who would be available to GAL attorneys as a GAL legal expert and resource would be very helpful to answer GAL attorney questions and to research relevant points of law. The Committee also finds that the legal proficiency of these less experienced GAL attorneys would be improved if these attorneys had access to an abuse and neglect litigation manual. The Committee believes this would help reduce the time a GAL attorney would have to spend on duplicative research.

RECOMMENDATION THREE: That the General Assembly retain the current level of funding for GAL attorney services for 1997-98 and, if requested, appropriate additional funds to the Administrative Office of the Courts to fund one additional attorney to be housed in the AOC Guardian Ad Litem Office, to serve as a research and resource attorney on guardian ad litem matters, to serve as a legal resource primarily to GAL attorneys by providing legal information and advice on legal issues facing GAL attorneys. Additionally, the General Assembly should appropriate additional funding for the development, preparation, publishing, and distribution of a GAL abuse and neglect litigation manual to be made available to GAL attorneys.

FINDING FOUR: As a result of its study, the Committee found that many members of the public and the General Assembly were not familiar with the Guardian Ad Litem Program, how it operated, and how the guardian ad litem program in child abuse and neglect cases differs from other guardians ad litem appointed for minors and incompetents in other legal matters. The Committee found that the public and legislators would benefit from written material explaining the purpose and workings of the GAL Program,

the role of the GAL staff, and an explanation of the differences in the various types of guardians ad litem authorized by law.

The Committee also found that due to budget reductions in recent years, the Administrative Office of the Courts has not been able to develop and conduct statewide educational seminars and other continuing education programs for GAL volunteers, GAL attorneys and others as it had done in the past. The Committee found that the GAL program as a whole would benefit from a statewide sharing of ideas and experiences by GAL participants through statewide educational seminars. The Committee also found that GAL attorneys would benefit from continuing legal education programs specialized for GAL attorneys. The Committee believes that by making these seminars available to GAL attorneys the level of legal competency among GAL attorneys will rise. Also by helping these attorneys fulfill their mandatory continuing education requirements, these attorneys would be encouraged to remain with the GAL program longer.

RECOMMENDATION FOUR: That the General Assembly ensure that funds are available for the 1997-99 fiscal years sufficient to:

1. Enable the AOC-GAL Program to develop informational materials to help the public and legislators understand the purpose of the Guardian Ad Litem program, how the program functions, the role of the GAL staff, and the difference between guardians ad litem appointed in child abuse and neglect case and guardians ad litem appointed in other situations.
2. Enable the AOC-GAL program to develop and conduct statewide educational seminars and other continuing education programs for GAL volunteers, attorneys and others.

FINDING FIVE: Based on the results of the Committee's survey of district court judges, GAL attorneys and volunteers, local DSS personnel, and county attorneys, the Committee finds the following:

- (1) GAL services are necessary to adequately protect the interests of abused, neglected and dependent children;
- (2) Judges rely heavily on GAL recommendations in making their decisions in abuse and neglect cases;
- (3) The relationship between GAL personnel and DSS personnel is one of cooperation and mutual respect;

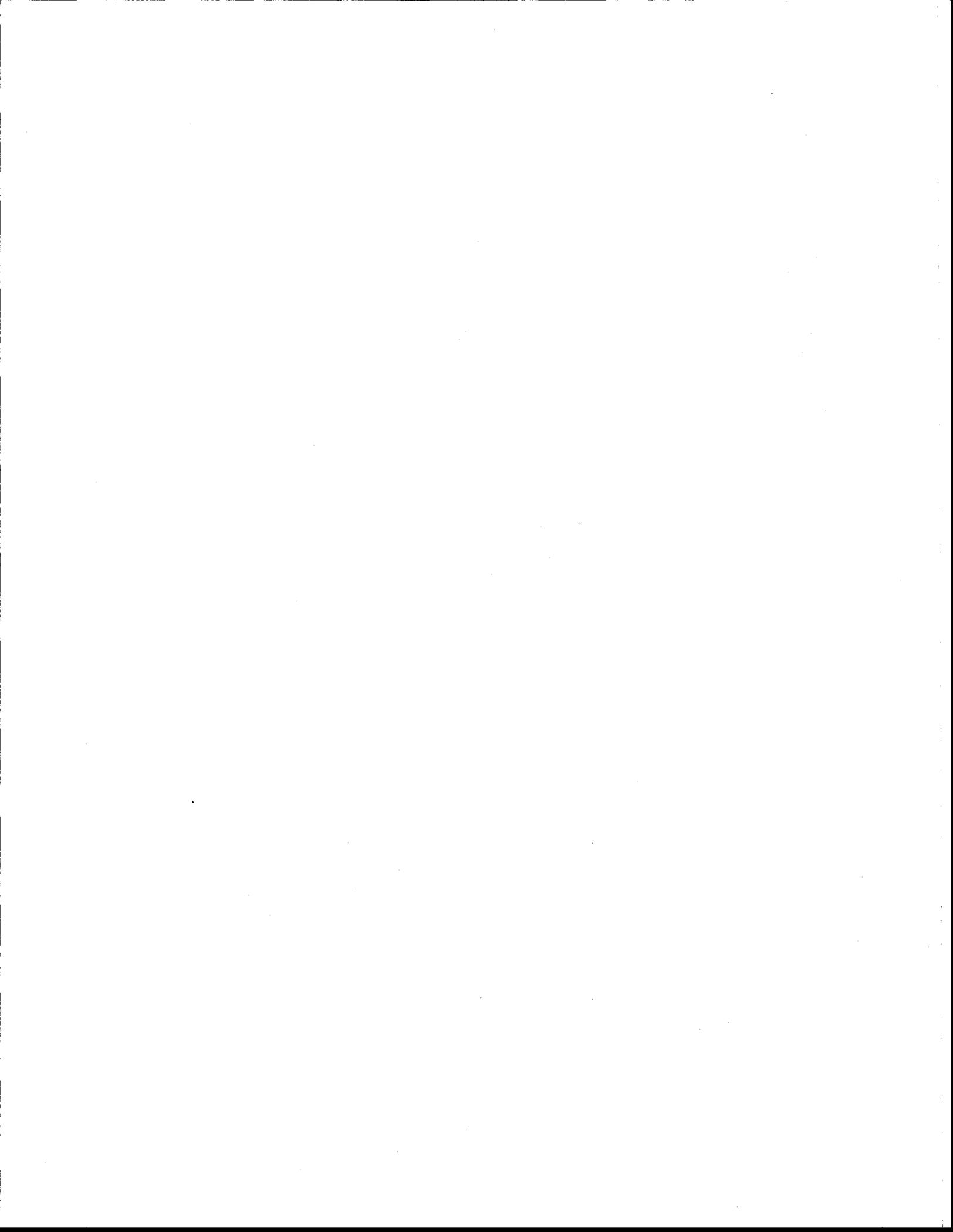
- (4) GAL volunteers should remain involved with the abuse and neglect case for as long as the child is outside of a permanent home;
- (5) The interests of abused and neglected children are best protected and served when both a GAL volunteer and a GAL attorney are involved in the case.

Survey results indicate that the GAL program is much needed to carry out the State's commitment to protecting abused, neglected and dependent children.

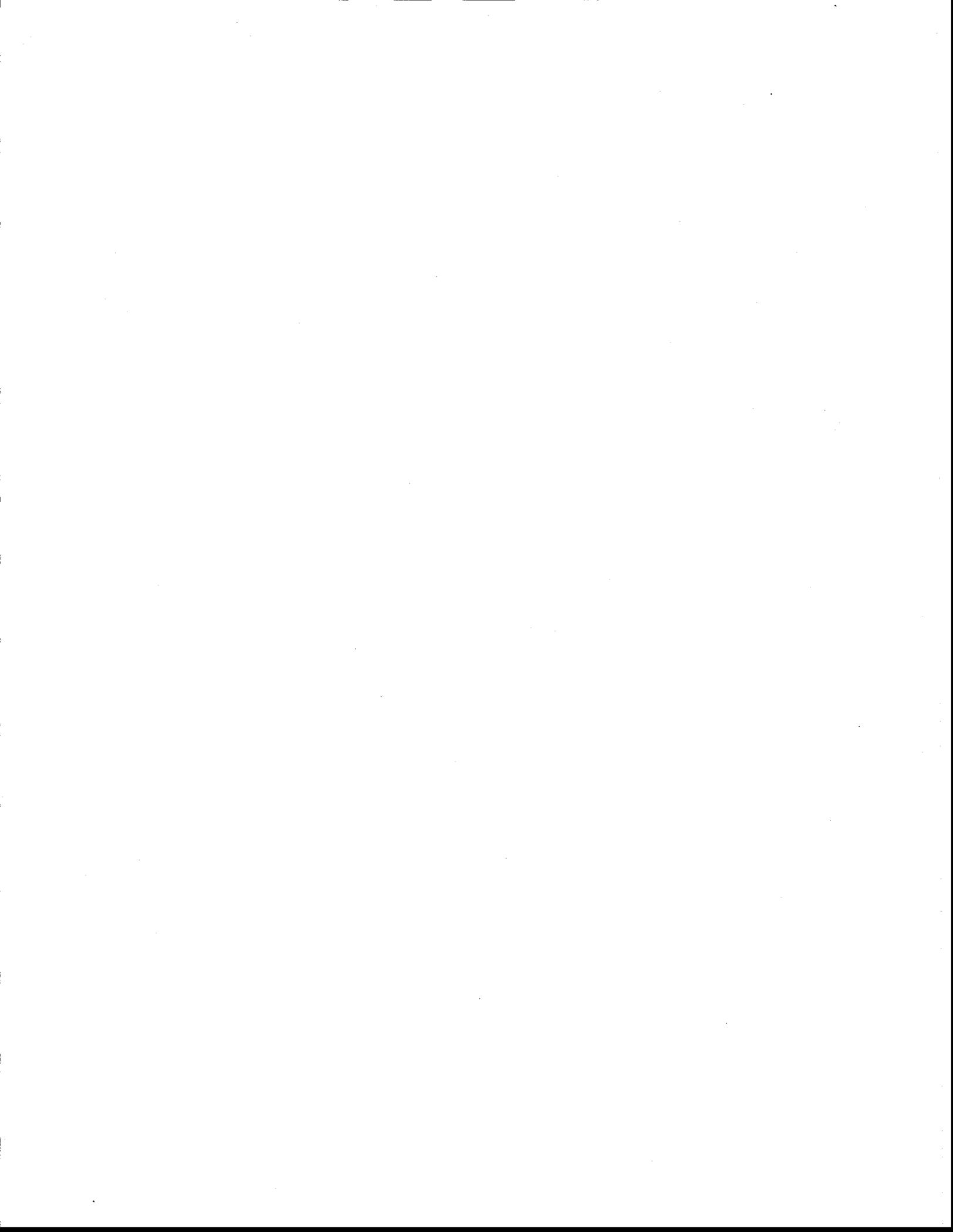
RECOMMENDATION FIVE: The State should maintain its commitment to identifying and protecting abused, neglected, and dependent children through the efforts of State and local DSS agencies and the Guardian Ad Litem program and should ensure that sufficient funds are available to these agencies and programs to carry out their State mandated duties and responsibilities.

FINDING SIX: The Committee finds that although its study of the Guardian Ad Litem program and child protective services generally indicated that these programs are working effectively, there may be areas where greater efficiencies could be realized in program administration and procedure. The Committee further finds that continued study is needed to identify those areas and possible methods for achieving greater efficiency and effectiveness.

RECOMMENDATION SIX: The Committee recommends that the General Assembly adopt the resolution found in Appendix H of this report entitled A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO CONTINUE ITS STUDY OF THE GUARDIAN AD LITEM PROGRAM.



APPENDICES



1 General Assembly for the establishment and maintenance of community penalties
 2 programs under this Article shall be administered by the Administrative Office of the
 3 Courts."

4 (e) G.S. 7A-773 reads as rewritten:

5 "§ 7A-773. Responsibilities of a community penalties program.

6 A community penalties program shall be responsible for:

- 7 (1) Targeting offenders who are eligible to receive an intermediate
 8 punishment based on their class of offense and prior record level
 9 and who face an imminent and substantial threat of imprisonment.
 10 (2) Preparing detailed community penalty plans for presentation to the
 11 sentencing judge by the offender's attorney; attorney or at the
 12 request of the sentencing judge.
 13 (3) Contracting or arranging with public or private agencies for
 14 services described in the community penalty plan.
 15 (4) Monitoring the progress of offenders under community penalty
 16 plans."
 17

18 Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

19 **COURT REPORTING/USE OF AUDIO AND VIDEO EQUIPMENT**

20 Sec. 21.10. (a) The Administrative Office of the Courts may use funds
 21 appropriated in this act for State court reporter positions and support, including
 22 contractual services, to purchase audio and video recording equipment for use in the
 23 courtroom, provided that the purchase is to implement budget reductions for court
 24 reporter programs as required in this act.

25 (b) The Office of the State Auditor shall study the court reporting
 26 system and determine the most cost-effective and appropriate use of official State
 27 court reporters, contractual reporters, and audio and video recording equipment for
 28 court reporting. The Office of the State Auditor shall consult with the Association of
 29 Official Court Reporters as part of the study. The study shall identify specific cost
 30 savings that would result from the implementation of the study recommendations.
 31 The Office of the State Auditor shall report to the Chairs of the Senate and House
 32 Appropriations Committees and the Chairs of the Senate and House Appropriations
 33 Subcommittees on Justice and Public Safety on the results of this study by April 1,
 34 1996.

35 (c) Any reduction in official court reporter positions pursuant to this
 36 section shall be implemented notwithstanding the provisions of G.S. 7A-198(f) and
 37 G.S. 7A-95(e).

38 (d) The Administrative Office of the Courts shall make reasonable
 39 efforts to assist official State court reporters and district court reporters in obtaining
 40 employment within the court system.
 41

42 Requested by: Representatives Justus, Thompson, Senator Ballance

43 **FUNDING OF JUDGESHIPS**

44 Sec. 21.11. The Judicial Department may use funds available to the
 45 Department to fund the district court judgeships authorized in Section 200.6 of
 46 Chapter 321 of the 1993 Session Laws for District Court Districts 3A, 8, 12, and 18
 47 upon the assumption of office by the initial holders of those judgeships.
 48

49 Requested by: Senators Ballance, Rand, Representatives Justus, Thompson, Daughtry

50 **GUARDIAN AD LITEM STUDY**

51 Sec. 21.12. (a) The Legislative Research Commission may study the
 52 Guardian Ad Litem program in the Judicial Department and the Children's Services
 53 program in the Division of Social Services. The study shall:

- 1 (1) Identify the amount and source of funding for legal services and
2 administration in child abuse and neglect and dependency cases in
3 those programs;
- 4 (2) Identify the legal participants involved in child abuse and neglect
5 and dependency court cases and each participant's responsibilities;
- 6 (3) Study the purpose and activities of each program and identify
7 activities that are similar;
- 8 (4) Identify federal mandates and any federal funding that would be
9 affected by any changes in legal services or administration of either
10 program, and determine whether any federal funds are available to
11 fund the Guardian Ad Litem program;
- 12 (5) Review guardian ad litem programs and children's services in
13 other states, including cost-saving measures taken by those states,
14 and identify other methods of administering and funding those
15 programs;
- 16 (6) Identify methods of reducing the costs for attorneys involved in
17 child abuse and neglect and dependency cases;
- 18 (7) Review administrative costs of each program and identify possible
19 cost savings; and
- 20 (8) Determine the extent to which guardian ad litem attorneys are
21 performing duties normally handled by volunteers and identify
22 methods to reduce such practices.
- 23 (b) The Commission may report its findings to the 1996 Regular Session
24 of the 1995 General Assembly.

25
26 Requested by: Representatives Justus, Thompson, Daughtry, Senators Ballance, Rand
27 **CHANGE GUARDIAN AD LITEM APPOINTMENT**

28 Sec. 21.13. G.S. 7A-586(a) reads as rewritten:

29 "(a) When in a petition a juvenile is alleged to be abused or neglected, the judge
30 shall appoint a guardian ad litem to represent the juvenile. When a juvenile is
31 alleged to be dependent, the judge may appoint a guardian ad litem to represent the
32 juvenile. The guardian ad litem and attorney advocate have standing to represent the
33 juvenile in all actions under this Subchapter where they have been appointed. The
34 appointment shall be made pursuant to the program established by Article 39 of this
35 Chapter unless representation is otherwise provided pursuant to G.S. 7A-491 or G.S.
36 7A-492. The appointment shall terminate at the end of two years. Upon motion of
37 any party including the guardian ad litem, or upon the judge's own motion, the
38 guardian ad litem may be reappointed upon a showing of good cause. In every case
39 where a nonattorney is appointed as a guardian ad litem, an attorney shall be
40 appointed in the case in order to assure protection of the child's legal rights ~~within~~
41 ~~the proceeding.~~ through the dispositional phase of the proceedings, and after
42 disposition when necessary to further the best interests of the child. The duties of the
43 guardian ad litem program shall be to make an investigation to determine the facts,
44 the needs of the juvenile, and the available resources within the family and
45 community to meet those needs; to facilitate, when appropriate, the settlement of
46 disputed issues; to offer evidence and examine witnesses at adjudication; to explore
47 options with the judge at the dispositional hearing; and to protect and promote the
48 best interest of the juvenile until formally relieved of the responsibility by the judge."

49
50 Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue,
51 Odom
52 **N.C. STATE BAR FUNDS**

NC General Assembly
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The Honorable Jerry Tillett
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 Manteo, NC 27954
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LRC STUDY COMMITTEE ON GUARDIAN AD LITEM

COMMITTEE RESPONSE TO GENERAL ASSEMBLY DIRECTIVE
IN
SECTION 21.12 OF CHAPTER 324 OF THE 1995 SESSION LAWS

The General Assembly authorized the Legislative Research Commission to study the Guardian Ad Litem program in the Judicial Department and the Children's Services program in the Division of Social Services. (1995 S.L., Ch. 324, Sec. 21.12.) The General Assembly directed that the study provide certain information to the Commission. Following is the Committee's response to the General Assembly's directive:

- (1) Identify the amount and source of funding for legal services and administration in child abuse and neglect and dependency cases in those programs.

GAL legal services: State funds expended for attorney services in the GAL program were \$846,328 for the 1995-96 fiscal year. State funds were appropriated in the amount of \$955,640 for the 1996-97 fiscal year. No other funds were available or expended for attorney services under the GAL program.

Legal services provided by county DSS: Estimates of legal costs related to child abuse neglect, and dependency cases are difficult to determine due to the various arrangements in place at the local level. For example, several counties have in-house counsel which may range from full-time to part-time attorney costs, while other counties provide this service via contractual arrangements. Some counties may have both arrangements. Thus, the compilation of this information is extremely staff intensive and not readily available.

- (2) Identify the legal participants involved in child abuse and neglect and dependency court cases and each participant's responsibilities.

Attorney representing DSS: This attorney may be an employee of DSS, may be the county attorney, or may be a private attorney under contract with DSS. This attorney represents DSS in the proceedings and presents to the court the recommendations of DSS based on its investigation of the case, its duty to protect the best interests of the child, and based on State law and DSS policy and rules.

Attorney representing one or both parents: The parent of a juvenile who is alleged to be abused, neglected, or dependent has the right to counsel and the right to appointment of counsel if the parent is indigent. The parent may waive this right. The law prohibits the judge from appointing a county attorney, prosecutor, or public defender to represent the parent. G.S. 7A-587. There may be an attorney for each parent, if their interests are adversarial as to one another. The parent attorney represents to the court the rights, interests, and wishes of the parent with respect to placement of and

other matters relating to the child. The parent attorney is the legal advocate for the parent.

Attorney representing GAL: When a nonattorney has been appointed as GAL for the child, an attorney must be appointed to assure protection of the child's legal rights. The attorney's appointment is through the dispositional phase of the case and may extend beyond that phase if it is necessary to further the best interests of the child. The GAL attorney represents to the court the findings and recommendations of the GAL volunteer and is the legal advocate for the child.

- (3) Study the purpose and activities of each program and identify activities that are similar. The statutory purpose of the GAL program is "to provide services in accordance with G.S. 7A-586 to abused, neglected, or dependent juveniles involved in judicial proceedings, and to assure that all participants in these proceedings are adequately trained to carry out their responsibilities." G.S. 7A-489. The mission of the GAL Program is to "...provide trained independent advocates to represent and promote the best interest of abused, neglected, or dependent children involved in the court and work toward a service system that ensure that these children are safe." (The Guardian Advocate, the newsletter of the Guardian Ad Litem Program, December, 1995.)

DSS is the State agency required by State law to identify, investigate, and intervene in child abuse and neglect matters. The agency provides services to the child and the family and petition the court for action if agency intervention fails.

Activities conducted by both programs that are similar are:

- Investigate the case. Collect and review records, interview the child, witnesses, and parents;
- Subpoena and call witnesses;
- Determine risks/trauma to child if child remains in home or remains in agency custody;
- Assessment of family problems and remedies; identify child's needs;
- Assesses conditions to determine if child can return to the home at some point;
- Presents evidence and additional witnesses based on investigation;
- Give testimony
- Advise court of best options for services for child
- Continues to monitor situation; gather reports for court;
- Initiate motions to the court if orders not followed or if change of circumstances
- File TPR petition when determined that this is in child's best interest.
- Present evidence on what's best for child

According to testimony by various presenters at Committee meetings (district court judge, private attorneys, local DSS workers and administrators, and private citizens who have used GAL and DSS services) and according to survey results, the

Committee finds that for the most part, given budgetary and policy constraints, both programs are effectively carrying out their purpose.

The Committee also studied a related issue of whether services provided by the GAL Program and by child protective services workers are unnecessarily duplicative.

District court judges were asked this question in the committee's survey. Their responses and comments indicate that there is some duplication that is necessary by virtue of the fact that the volunteers and social service workers are investigating the same case and the same facts. A large majority of the judges indicated there was duplication ranging from "none" to "some". Judges who commented on their response to this question indicated that although there was some duplication, it was necessary to ensure that the child's best interests were protected.

- (4) Identify federal mandates and any federal funding that would be affected by an changes in legal services or administration of either program, and determine whether any federal funds are available to fund the GAL program.

There is approximately \$600,000 in federal Child Abuse and Prevent Training Act (CAPTA) funds in the DHR/DSS budget for training and technical assistance in the area of child protective services. States receiving these grant funds must agree to assign guardian ad litem services (may be volunteer or paid) for CPS cases.

- (5) Review guardian ad litem programs and children's services in other states, including cost-savings measures taken by those states, and identify other methods of administering and funding those programs.

Twelve states have statewide CASA/GAL types programs. Most of these states do not cover 100% of eligible children. (North Carolina covers 100% of eligible children.) 51% of all of GAL/CASA-type programs are administered by private organizations. Funding is from a variety of sources: 51% have a mix of private/public funds; 7% are private only, 42% are public only. Trend is towards diversifying funding. Private funds are often used for special projects, not staffing.

Federal funds are not available except for special grants. (North Carolina has a federal grant, \$25,000, through Crime Commission.). National CASA has a \$5,000,000 grant program (grants are primarily to start new programs or fund special projects.) NC GAL Program has applied to CASA for a \$100,000 grant to upgrade its volunteer recruitment program. Program staff have been unofficially notified by CASA that the amount awarded is \$75,000.

Public funding for GAL programs vary. Sources include: unclaimed state lottery winnings (Arizona) and a portion of marriage license fees (Florida). Most public funding involves direct appropriations.

Administration: Most of the new CASA/GAL type programs that began operations in

1994 or later are private non-profit organizations. This is reflected in the continuing increase in the percentage of privately administered CASA programs nationwide.

(6) Identify methods of reducing the costs for attorneys involved in child abuse and neglect and dependency cases.

Based on survey results and the General Assembly's commitment as evidenced by State law, the Committee finds that attorney representation in guardian ad litem cases is critical to protecting the legal rights and interests of abused, neglected, and dependent children. Thus, the Committee has recommended that the General Assembly ensure that sufficient funding is appropriated to provide legal representation in accordance with G.S. 7A-586. Although there was concern that recent reductions in funding for the GAL program may jeopardize the program's ability to sufficiently and adequately secure counsel to represent all of the abused and neglected children entitled to representation under State law, the Committee found that these reductions have only been in place since 1995 and more time is needed to fully realize the effects of the reductions. The Committee further found that reductions in costs may be realized through improved program administration and through improvements in the court process that would reduce time spent on hearings.

(7) Review administrative costs of each program and identify possible cost savings.

GAL program. Budget is 73% staff; 18% legal services; 9% general administration for 1996-97. Legal services budget has been reduced by approximately 28% since 1993-94. Cost savings could be realized through major recruitment efforts in districts where staff is heavily involved in child representation. Result would be more volunteers and more efficient use of current staff.

DSS. Estimated State appropriations for child welfare services (includes child protective services, foster care, and adoptions) in FY 93-94 were \$21 million dollars (18.5% of the total \$113.3 million spent. (Federal \$=37million; State \$=21 million; County \$=55.3 million.) Since the majority of the child welfare services delivery system is administered by county departments of social services (only monthly assistance payments and training are State functions), and the majority of the funds spent are provided by federal and local governments, the Committee's study did not focus on cost savings in this program.

(8) Determine extent to which guardian ad litem attorneys are performing duties normally handled by volunteers and identify methods to reduce such practices.

In 1995, the GAL Program ended the practice of paying attorneys for time spent on duties normally assigned to volunteers. However, either staff or attorneys, or both, continue to substitute for volunteers when no volunteers are available. For example, in almost one-third of the GAL districts, staff/attorneys represent 50% or more of the children in the district rather than using volunteers. Improved recruitment, training, and retention of volunteers should reduce amount of staff/attorney time spent on volunteer duties.

Legislative Research Commission Subcommittee

January 5, 1996

Presentation by the Administrative Office of the Courts
Judge Jack Cozort, Acting Director, Administrative Office the Courts
Ilene B. Nelson, Administrator, Guardian ad Litem Services Division

I. The Judicial System Context

- Judges need good information in order to make good decisions
- Judges need to hear from all of the parties in the case--the child, the parents, and the Department of Social Services
- In juvenile court the judge has a statutory duty to do more than just be impartial--the judge has the duty to ensure that the court protects the best interest of the child
- The Juvenile Code provides for a judicial oversight role at every stage of juvenile proceedings, except adjudication
- The child's perspective must be presented independently if the court is to be able to make an informed decision about that child

II. How A Reported Case of Child Abuse, Neglect or Dependency Comes to Court

- Report made to Department of Social Services (DSS) by someone in the community
- DSS screens call and investigates allegations of abuse, neglect, or dependency
- According to the most current data available from the Department of Human Resources, an average of 30% of all reports are substantiated across the state.
- If the allegations are not substantiated, DSS closes the case. This occurs in 70 out of 100 cases.
- If DSS substantiates the allegations, they coordinate the provision of services to the child and the child's family in their community. This occurs in 30 out of 100 cases.
- In 3 out of the 30 cases where DSS investigations substantiate allegations of abuse, neglect or dependency, DSS files a petition seeking court intervention to alleviate the problems that initiated the child's case
- Statute requires Guardian ad Litem (GAL) appointment at the time DSS files the petition

III. Abuse, Neglect, and Dependency Cases Heard in Civil Court

- Civil Court focuses on the child and the allegations that the child is abused, neglected or dependent. It does not focus on punishing the person(s) who caused the child to be abused, neglected or dependent.

- Child is the victim--the goal of the civil court system is to protect the child
- In criminal court, the goal is to punish perpetrators in the name of the state
- The named parties in civil cases have a statutory right to be heard and to be represented by counsel in order to fully participate in the legal system

IV. Guardian ad Litem Volunteer and Attorney Advocate Role

- DSS as the petitioner and as primary service provider in abuse, neglect and dependency cases has an attorney to represent its interests
- In these court cases, the child has lost her/his traditional advocate, the parent
- Because of DSS investigation and substantiation of allegations, the parent is now an adversary with their legal interests in conflict with the child's. Parents have an attorney to protect their own legal interests.
- Child must be represented and respected as unique individual with a position that is separate from the family
- GAL is needed because a child does not know what is in his best interest. GAL researches and investigates child's needs and presents them through the attorney advocate to the court. The GAL is the voice of the child with duty to advocate for the best interest of the child, and to stand in the shoes of the child victim.
- Attorney Advocate also serves as the child's lawyer and ensures the child's voice is heard in the court system which is now charged with protecting the child victim

V. Public-Private Partnership

- Mission statement of the GAL program
- Public-Private partnership between the private citizens who give their time to advocate for child victims and government that provides supervision and quality assurance.
- During 1994-95, GAL volunteers donating nearly 300,000 hours which if paid at minimum wage would cost the state \$1.2 million.
- GAL program staff recruit, screen, train and supervise these community citizens
- Why use volunteers?
 - volunteers are independent
 - volunteers carry very few cases, on average 2.5 per volunteer
 - volunteers bring a sense of urgency for every case
 - volunteers have time to thoroughly investigate their cases
 - volunteers have the child as their only client and interest
 - volunteers represent the community voice and articulate community standards
- Why use attorney advocates?
 - legal system built on adversarial system
 - attorney advocates keep the playing field level by ensuring the information gathered by volunteers is presented to court appropriately
 - attorney advocates protect the child's legal rights within the proceedings

VI. Growth of Program

- Program established in 1983 with goal to complete coverage across the state by 1987. Last staff hired in January 1994 in Judicial District 24--Madison, Yadkin, Mitchell, Avery, Watauga Counties.
- Caseload linear growth trend
- 1994-95 volunteers numbered 3,487 and donated close to 300,000 hours
- Staff growth to cover the state--now at 88.5 field staff
- Ratio of staff to cases 1:130--national association of court advocates recommends no higher than 1:80
- Attorney cost very low: average before 1995 of less than \$100 per child per year
- Hearings showed a small decrease last year because of changes in reporting method

VII. Legislative Changes Made in Program in 1995

- NCGS 7A-586 amended to limit initial appointment of volunteer to two years. Allows for re-appointment when good cause is shown to do so. The amendment mandates the attorney advocate only through case disposition, but provides that an attorney may be used when needed to further the child's best interest in further proceedings of the case.
- Two-year appointment is a mandate to push the system to get children in permanent places within that period, hopefully back in their own homes.
- Limiting GAL involvement to two years means case activity busier and more intense
- Two-year appointments may reduce GAL caseload in two years, but open cases will have more hearings
- Only the most difficult and complicated cases come to court
- Attorney budget managed by:
 - paying attorneys \$120 for disposition of every new petition;
 - paying attorneys for post-disposition representation based on the number of children in a judicial district; and
 - limiting GAL involvement in special legal proceedings

VII. Conclusion

- The Administrative Office of the Courts is committed to the maintenance of the Guardian ad Litem program
- During 1994-95, 3487 volunteers and over 100 attorney advocates ensured that the court heard the independent voice of 17,282 child victims
- Government agency in partnership with private community volunteers--cost effective



The Guardian ad Litem Program Today

The mission of the Guardian ad Litem Program is to provide trained independent advocates to represent and promote the best interest of abused, neglected or dependent children involved in the court and work toward a service system that ensures that these children are safe.

The Guardian ad Litem Program of the Administrative Office of the Courts is a true partnership between the private sector and a government agency. For more than a decade, citizen volunteers have worked to ensure that before the court makes decisions affecting the lives of abused and neglected children that it is informed of the community's standard for the protection and care of its children.

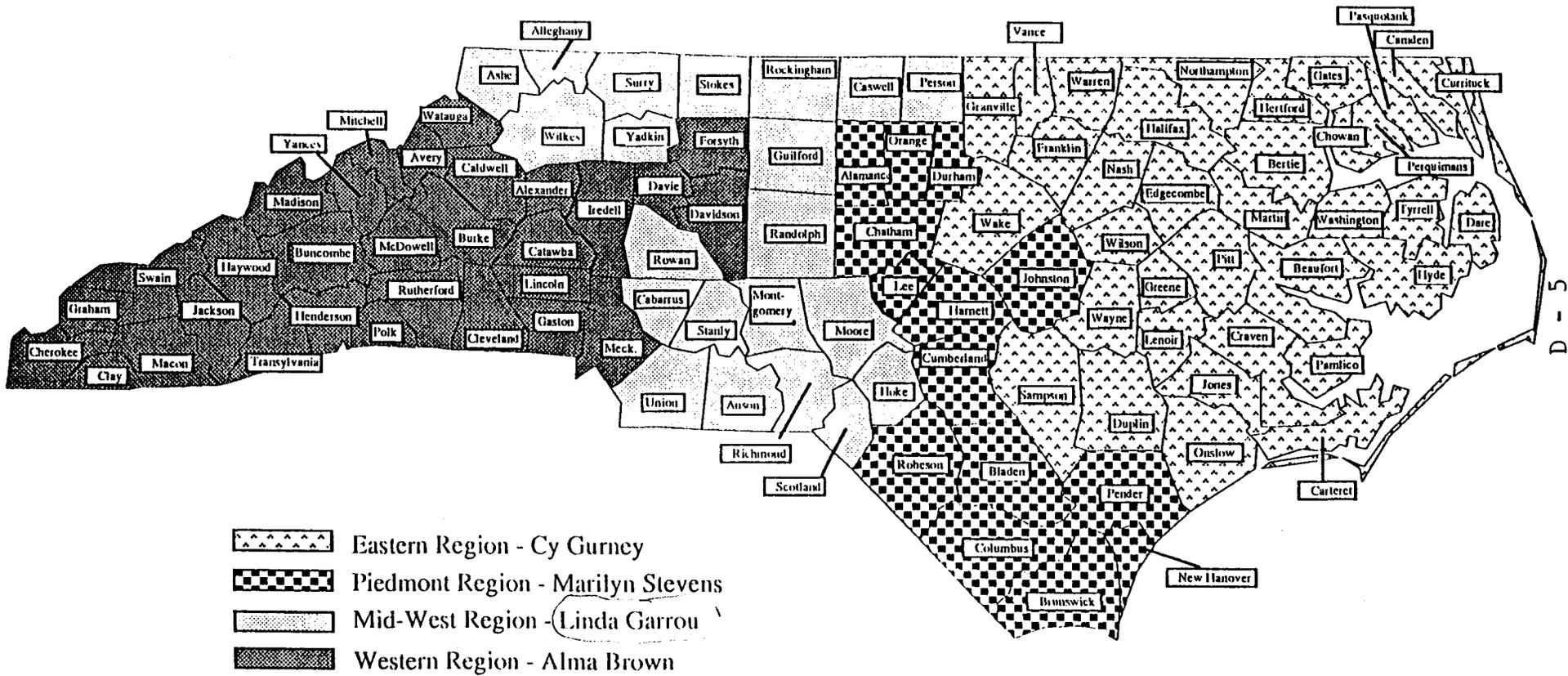
Last year, private citizens who had been screened and trained as volunteers through the Guardian ad Litem Program numbered over 3,400. They were appointed as Guardians ad Litem and charged by law to gather and present facts to the court in the abuse and neglect cases of more than 17,000 children. These community volunteers were further mandated to recommend services and interventions that would ensure the children's safety and that children who had been removed from their homes would be in a permanent home as soon as possible. District court judges, responsible for ordering services and interventions in these cases, depended on guardians ad litem to inform them about what was in the best interest of each child.

The Guardian ad Litem Program models another partnership--one between the lay citizenry of North Carolina and the legal profession. Local attorneys pair with each volunteer Guardian ad Litem to provide legal expertise during the complicated and sensitive court hearings. The attorneys represent the legal rights of the children, as well as ensure that the work of the citizen volunteers is presented appropriately in the courtroom setting. Consistent and child focused advocacy provided by the Guardian ad Litem volunteer/attorney team has been essential in moving many children out of state-subsidized care to stable permanent placements, most often back with their own families.

A skilled and dedicated Guardian ad Litem staff capably coordinate the work of the program's volunteers and attorneys. The staff is responsible for the volunteer recruitment, screening, training, monitoring, and technical assistance needed to ensure equitable and accountable Guardian ad Litem service throughout the state.

In concert with other agencies, the Guardian ad Litem Program is a necessary part of the court system. Legislative changes this past year limited our appointment to two years. Child abuse and neglect cases often have not been resolved in that time period due to their complex nature and a lack of adequate resources for children and families. The limited appointment will require Guardians ad Litem to serve the court in a more intensive and concerted manner to provide a clear road map for judges regarding what each child needs and how best to address those needs. The Guardian ad Litem Program intends never to leave a case without a viable permanent plan or with unresolved issues for a child. A decade of experience demonstrates that the Guardian ad Litem partnerships--private citizens working with the courts, private citizens working with the legal profession--are not just good public policy, but they serve the children and the courts of North Carolina very well.

Guardian ad Litem Regions as of January, 1996



**Guardian ad Litem Services Division
Workload and Resources**

On December 31, 1995

I. Total Children Represented by Program on 12/31/95 -- 9,691

Children Represented by Volunteer and Attorney	8,002
Children Represented by Staff and Attorney	628
Children Represented by Attorney Alone	1,061

II. Total Volunteers Active During Year on 12/31/95 -- 2,299

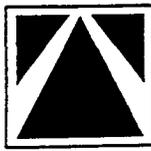
III. Program Personnel on 12/31/95 -- 96

Field Volunteer Supervisors (<i>District Administrator, Program Supervisor</i>)	73
Field Support Staff (<i>Program Assistant, Secretary I</i>)	15.5
State Office Staff (<i>Administrator, Assistant Administrator, Regional Administrator, Data Coordinator, Administrative Secretary</i>)	7.5

IV. Ratio of Field Volunteer Supervisors : Volunteers on 12/31/95 **1 : 35**

V. Ratio of Field Volunteer Supervisors : Children on 12/31/95 **1 : 133**

VI. Average Number of Children Represented by Each Volunteer on 12/31/95 **4**



The North Carolina State Bar

ALICE NEECE MOSELEY

Assistant Executive Director

July 1, 1996

Ms. Ilene B. Nelson
Administrative Office of the Courts
P.O. Box 2448
Raleigh, NC 27602

EA 2043 - Communicating with a Witness

Dear Ms. Nelson:

Thank you for your letter of June 13, 1996, in which you seek an advisory ethics opinion. I apologize for the delay in responding to your request. I am pleased to offer the following opinion in response to your inquiry.

Inquiry #1: G.S. Section 7A-586(a) of the juvenile code provides for the appointment of a guardian ad litem (GAL) for every child alleged to be abused or neglected. The section states that a GAL who is not an attorney shall be appointed an attorney to assure the protection of the child's legal rights through the dispositional phase of the proceedings and after disposition when necessary to further the best interests of the child. The section provides that the GAL and the attorney advocate have standing to represent the juvenile in all actions under the subchapter.

It is alleged that Child A was sexually abused by her father. Attorney X and Guardian Ad Litem Y (GAL Y) were appointed to represent Child A in the juvenile petition. The district attorney also charged the father with first degree rape. The district attorney wants to interview GAL Y about the information she obtained during her investigation in the juvenile matter. Should the district attorney obtain the consent of Attorney X prior to communicating with GAL Y?

Opinion #1: Yes. Rule 7.4(1)(a) provides:

During the course of his or her representation of a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

JUL 03 1996

Ilene B. Nelson
Page 2
July 1, 1996

The comment to Rule 7.4 adds, "[t]his rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question."

Although the criminal action against the father is a separate legal action from the juvenile petition, Attorney X represents GAL Y in her role as GAL for Child A which representation necessarily includes representation of GAL Y with regard to the information she has gained in fulfilling that role. RPC 87 clarifies that a lawyer who desires to interview a witness who is not a party, but who is represented by counsel, must obtain the consent of the witness' lawyer. The opinion states, "[t]he attorney/client relationship enjoyed by a potential witness and his or her counsel is not less worthy of protection than that enjoyed by any named party and his or her lawyer."

Inquiry #2: Would the answer to inquiry #1 be different if the attorney who seeks to interview GAL Y is an attorney who represents a party in a civil action involving the family of Child A?

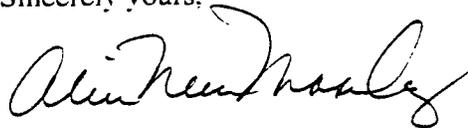
Opinion #2: No.

Inquiry #3: Would the answer to inquiry #1 be different if the attorney who seeks to interview GAL Y represents a parent in the juvenile matter for which GAL Y was appointed?

Opinion #3: No.

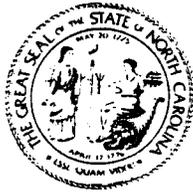
You may rely upon the advice contained in this letter pending its review by the Ethics Committee at its next quarterly meeting in July 1996. Should the committee then decide that my advice should be altered in any material way, you will be notified immediately.

Sincerely yours,



Alice Neece Moseley
Assistant Executive Director

jl



ADMINISTRATIVE OFFICE OF THE COURTS
JUSTICE BUILDING

P. O. Box 2448
RALEIGH, N. C. 27602

JUDGE JACK COZORT
ACTING DIRECTOR
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
DALLAS A. CAMERON, JR.
ASSISTANT DIRECTOR

ILENE B. NELSON, JD
ADMINISTRATOR
GUARDIAN AD LITEM PROGRAM
XXXXXXXXXXXXXX
(919) 662-4300

June 13, 1996

Ms. Alice Mosely
Members of the Ethics Committee
North Carolina State Bar
P.O. Box 25908
Raleigh, N.C. 27611

Dear Ms. Mosely and Members of the Ethics Committee:

I am writing to request an ethics opinion in regard to the following scenarios:

Section §7A-586 within the juvenile code provides for the appointment of a Guardian ad Litem (GAL) for every child alleged to be abused or neglected. The section then goes on to say that if the GAL is not an attorney, then an attorney shall be appointed in the case in order to assure protection of the child's legal rights through the dispositional phase of the proceedings, and after disposition when necessary to further the best interest of the child. In addition, the section provides that the GAL and attorney advocate have standing to represent the juvenile in all actions under this subchapter where they have been appointed.

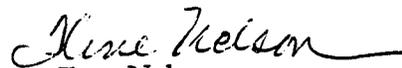
Query 1: Child A has allegedly been sexually abused by her father. Attorney X and Guardian ad Litem (GAL) Y have been appointed to represent child A in the juvenile matter. The district attorney has also charged the father with first degree rape. The district attorney in the criminal matter seeks to interview GAL Y about the facts of the case she obtained through her investigation in the juvenile matter. Should the District Attorney seek approval from Attorney X before commencing the interview?

Query 2: Would the answer change if the attorney who seeks to interview volunteer GAL Y is not the district attorney but another attorney who is involved in a civil matter involving this same family?

Query 3: Would the answer change if the attorney who seeks to interview the volunteer GAL Y represents a parent in the juvenile matter for which the GAL Y was appointed?

Thank you very much for your attention to this request. I am looking forward to receiving your response. If you need any further information, please write or call.

Sincerely,


Ilene Nelson

cc: Judge Jack Cozort
Tom Andrews



The North Carolina State Bar

OFFICE OF THE SECRETARY
L. Thomas Lunsford, II
208 Fayetteville Street Mall
Post Office Box 25908
Raleigh, North Carolina 27611-5908
(919) 828-4620 ext. 244

November 25, 1996

Ms. Ilene B. Nelson
Administrative Office of the Courts
PO Box 2448
Raleigh, NC 27602

EA 2073 - Communicating with a Represented Person

Dear Ms. Nelson:

Thank you for your letter of August 18, 1996, in which you seek an advisory ethics opinion. I apologize for the delay in responding to your request. I am pleased to offer the following opinion in response to your inquiry.

Inquiry #1: G.S. Section 7A-586 of the Juvenile Code provides for the appointment of a guardian ad litem (GAL) for every child alleged to be abused or neglected. The section states that a GAL who is not an attorney shall be appointed an attorney to assure the protection of the child's legal rights through the dispositional phase of the proceedings and after disposition when necessary to further the best interests of the child. The section also provides that the GAL and the attorney advocate have standing to represent the juvenile in all actions under the subject chapter.

Some of the duties of the GAL, as defined in G.S. 7A-586, include: investigating the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; facilitating, when appropriate, the settlement of disputed issues; exploring options with the judge at the dispositional hearing; and protecting and promoting the best interests of the juvenile.

It is alleged that Child A was sexually abused by her father. Attorney X and Guardian Ad Litem Y were appointed to represent Child A in the juvenile petition. Guardian Ad Litem Y is not an attorney. She is interested in interviewing the mother of Child A. The mother is represented in this matter by another attorney. Must Guardian Ad Litem Y obtain the approval of the mother's attorney before communicating with the mother?

Ilene B. Nelson
Page 2
November 25, 1996

Opinion #1: No. The prohibition on communications with a represented opposing party found in Rule 7.4 of the Rules of Professional Conduct does not apply to Guardian Ad Litem Y because the Rules of Professional Conduct do not apply to nonlawyers.

Inquiry #2: Would the answer to inquiry #1 be different if Guardian Ad Litem Y is an attorney but is performing the role of guardian ad litem solely and is not performing the role of the attorney advocate?

Opinion #2: Guardian Ad Litem Y may communicate with the mother without obtaining the consent of the mother's attorney. Rule 7.4 prohibits communications with a represented opposing party "[d]uring the course of [the lawyer's] representation of a client." If Guardian Ad Litem Y is not acting as the attorney advocate but is only serving as the appointed legal representative of the child, she is not subject to the prohibition in Rule 7.4 because she is not acting in the course of her representation of a client.

You may rely upon the advice contained in this letter pending its review by the Ethics Committee at its next quarterly meeting in January 1997. Should the committee then decide that my advice should be altered in any material way, you will be notified immediately.

Sincerely yours,



Alice Neece Moseley
Assistant Executive Director

jl



ADMINISTRATIVE OFFICE OF THE COURTS
JUSTICE BUILDING

P. O. Box 2448
RALEIGH, N. C. 27602

JAMES C. DRENNAN
DIRECTOR

DALLAS A. CAMERON, JR.
ASSISTANT DIRECTOR

ILENE B. NELSON, JD
ADMINISTRATOR

GUARDIAN AD LITEM PROGRAM
(919) 733-7107

August 18, 1996

Ms. Alice Mosely
Members of the Ethics Committee
North Carolina State Bar
P.O. Box 25908
Raleigh, N.C. 27611

Dear Ms. Mosely and Members of the Ethics Committee:

I am writing to request an ethics opinion in regard to the following scenarios:

Section §7A-586 within the juvenile code provides for the appointment of a Guardian ad Litem (GAL) for every child alleged to be abused or neglected. The section then goes on to say that if the GAL is not an attorney, then an attorney shall be appointed in the case in order to assure protection of the child's legal rights through the dispositional phase of the proceedings, and after disposition when necessary to further the best interest of the child. In addition, the section provides that the GAL and attorney advocate have standing to represent the juvenile in all actions under this subchapter where they have been appointed.

Some of the duties of the guardian ad litem, as defined in §586, are to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to explore options with the judge at the dispositional hearing; and to protect and promote the best interest of the juvenile.

Query 1: Child A has allegedly been sexually abused by her father. Attorney X and Guardian ad Litem (GAL) Y have been appointed to represent child A in the juvenile matter. The non-attorney GAL is interested in interviewing the mother in this case. The mother is represented by an attorney. Must the lay GAL seek approval from the mother's attorney before commencing the interview?

Query 2: Would the answer change if the GAL happens to be an attorney but is performing the role of the volunteer not the role of the attorney advocate?

Thank you very much for your attention to this request. I am looking forward to receiving your response. If you need any further information, please write or call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ilene Nelson", with a long horizontal flourish extending to the right.

Ilene Nelson

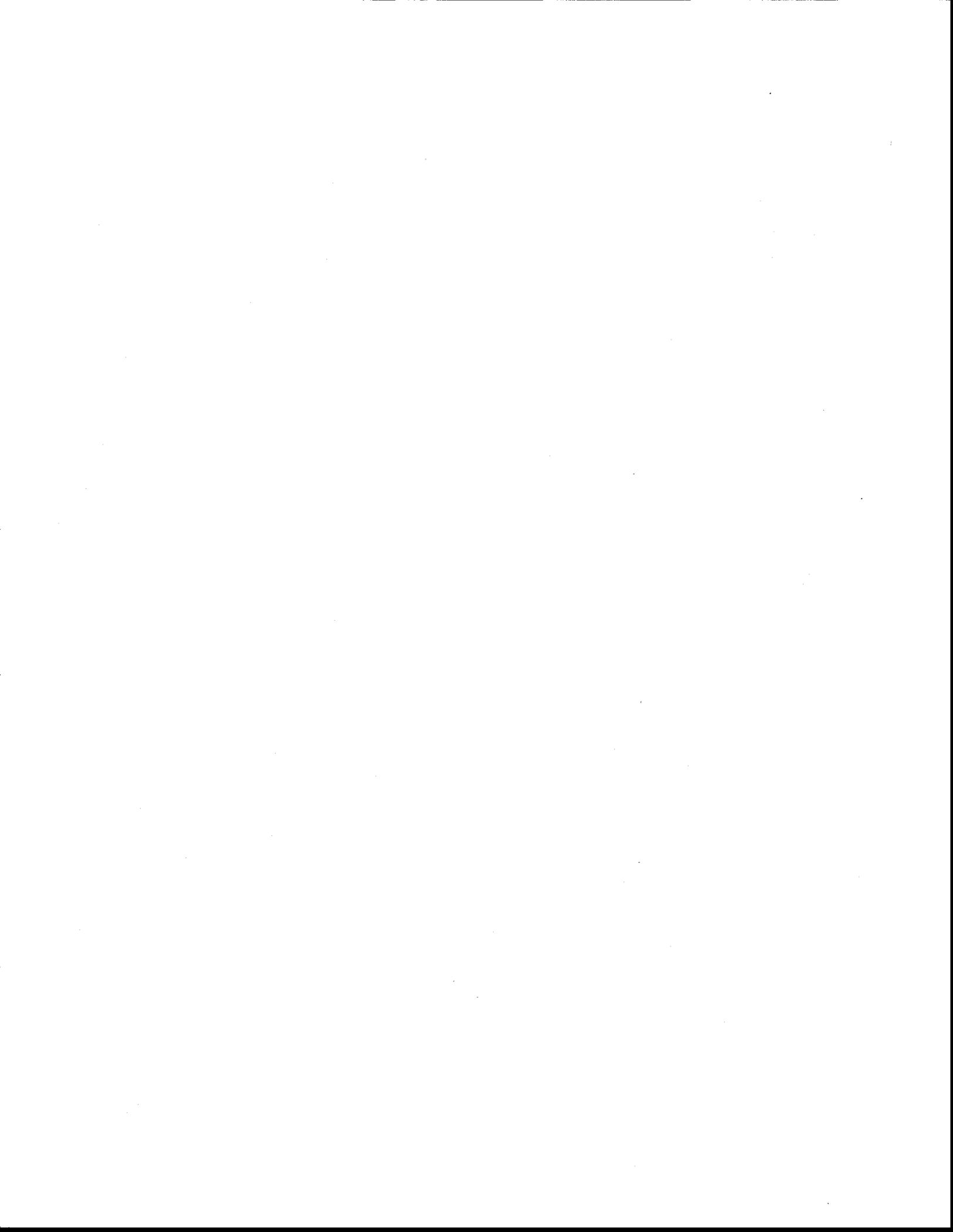
cc: Judge Jack Cozort
Tom Andrews

Appendix F

GUARDIAN AD LITEM STUDY
SURVEY RESULTS

LRC's Committee on Guardian Ad Litem

December, 1996



EXECUTIVE SUMMARY

From the survey, it appears that the Guardian Ad Litem Program in child abuse and neglect cases is very successful and is fulfilling an important need in the lives of abused and neglected children.

By substantial majorities, North Carolina district court judges responding to the survey believe GAL services are needed for the best interest of abused and neglected children and that they have come to rely heavily on those services in their decision-making. The judges look to the GAL for opinions in all phases of the court's involvement in the lives of these children.

Judges believe GAL volunteers and attorneys are performing their duties well and that they are well trained. Most judges feel there is little or no unnecessary duplication in what the GAL does and what the DSS social worker does. The judges also strongly believe that both a GAL volunteer and a GAL attorney are needed in all cases. They also feel GAL services are needed for all abused, neglected and dependent children, and that the GAL should remain involved with the child's case as long as the child is outside of a permanent home.

The level of cooperation between DSS personnel and the GAL's generally seems to be very good. GAL volunteers are given high marks by DSS personnel and GAL attorneys. DSS personnel are given high marks in return by GAL volunteers. Although DSS and GAL agree on recommendations to be made to the court in most cases, when there is initial disagreement, both groups are able to resolve their differences before getting to court most of the time.

GAL volunteers seem satisfied with the training and professional support they are receiving from the GAL Program.

GAL volunteers, GAL attorneys, DSS personnel and DSS attorneys all agree that GAL services are needed, and they generally agree that most of the needs for these services are being adequately met. The most common suggestion for how the program can be improved is by the recruitment of additional volunteers.

Guardian Ad Litem Survey Analysis and Results

BACKGROUND INFORMATION

Study Authorized by General Assembly

In 1995, the General Assembly authorized the Legislative Research Commission (LRC) to "study the Guardian Ad Litem Program in the Judicial Department and the Children's Services Program in the Division of Social Services." (1995 Session Laws, Chapter 324, Sec. 21.12) As part of its study, the LRC Guardian Ad Litem Program Committee authorized staff to conduct a statewide survey to ascertain the views of persons involved in abuse and neglect cases concerning guardian ad litem services in their community.

General Information: Survey Sample

Surveys were sent to five groups of persons. District Court Judges (193), County Attorneys (100), County DSS Personnel (100), GAL Volunteers (522), and GAL Attorneys (90). Survey questions differed slightly to match the respondent group, but were overall similar in nature, topic, and structure. Additionally, letters were mailed to the President of each County Bar Association to afford them an opportunity to comment on the local guardian ad litem program. Surveys were not mailed to Presidents of County Bar Associations.

Survey forms do not identify the respondent and no identifying information has been kept for any respondents to the survey. On some questions respondents were asked to explain the answer or to give additional comments on the question or response. This analysis summarizes the raw data taken from each response and does not include a summary of the comments or explanation given by the respondent. Survey responses including comments and explanations are available for review.

DISTRICT COURT JUDGES SURVEY

Background

In North Carolina child abuse, neglect, and dependency cases are heard in District Court. There are 193 district court judges in North Carolina, not all of whom preside over abuse and neglect cases. Mailing labels were obtained from the Administrative Office of the Courts and a survey form was mailed to each of the 193 district court judges. 79 judges responded to the survey. This represents a 40.9% response rate of all district court judges. Of these judges, the Administrative Office of the Courts estimates that 159 of the 193 district court judges hear juvenile court cases sometime during the year. The survey response rate reflects 49.7% of all the judges that hear juvenile cases..

Not all of the 79 judges who responded to the survey answered every question on the survey, although most did. Thus, percentages in this analysis are stated as a percentage of judges who responded to the particular question, rather than as a percentage of the total number of judges who responded to the survey. Calculating percentages in this manner allows for the total percent for a given question to equal 100%.

The judges answering the survey had significant involvement in abuse and neglect cases in Juvenile District Court, and frequent contact with the GAL program. Almost half the respondents heard abuse and neglect cases at least three times a month, and over 90% heard abuse and neglect cases twice a month or more. At least 20% of the judges heard these cases weekly. The judges answering the survey are hearing these types of cases on an average of three times a month.

What the Judges Said.

Reliance on the GAL Program

A large majority of judges (96%) said GAL services are necessary to adequately serve the best interests of abused and neglected children and they rely on these services heavily in all phases of abuse and neglect and child protection cases. The judges indicated they relied heavily more on GAL volunteers (72%) than on expert witnesses (63%), DSS workers (61%), the GAL attorney (59%) or the DSS attorney (48%).

GAL services are also relied upon by these judges in all phases of the court's process in dealing with abuse and neglect cases and the child protection services. More than 80% of the judges felt GAL services were more than helpful in three out of the four key phases of the court's process for these children: dispositional, periodic review and termination of parental rights. More than 88% of the judges felt this way about the GAL's role in the dispositional phase, the stage where the court is deciding what needs to be done for a child found to be

neglected or abused. 83% felt this way in the periodic review phase the court conducts on a regular basis to review and modify the child's permanency placement plan. 80% of the judges felt this way when considering whether the abused or neglected child's natural parents' rights should be terminated so the child can be placed in a permanent adoptive home. This result suggests that judges find the GAL recommendations very helpful when deciding on where to place the child, determining whether the placement is working well and court orders are being followed, and making decisions about the termination of parental rights so that permanent placement can occur.

GAL Performance

Judges feel strongly that GAL volunteers and GAL attorneys perform their duties well. 50% of the judges felt volunteers performed very well, and 84% felt the volunteers performed more than adequately. 61% of the judges felt GAL attorneys performed very well and 82% felt these attorneys performed more than adequately.

GAL Training

Judges feel that GAL volunteers are being well trained for their role in the court process. Almost all the judges (98%) felt GAL volunteer training was adequate or better. 65% believe the training is more than adequate and 35% believe the volunteers are trained very well.

Value and Necessity

Almost all the judges responding to the survey believe the GAL program is providing valuable services to the court process as well as abused and neglected children. Over 96% of the respondents felt the program was providing a valuable service to the children and the same 96% felt the program was also valuable to the court process.

Two of the issues the Study Commission was established to examine were whether all the GAL services were necessary and whether there was any unnecessary duplication in the program. Of particular interest to the Study Committee was whether services provided by DSS workers and GAL volunteers are unnecessarily duplicative. Responses indicate that there is some unnecessary duplication but that it is not significant. In responding to this question, roughly 8% of the judges indicated duplication ranging from "some" (3.8%) to "significant" (3.8%), whereas 92% indicated duplication ranging from "none" (28%) to "some" (64%). Over 54% said they felt there was little or no unnecessary duplication with social workers.

Questions have also been raised concerning whether both a GAL volunteer and a GAL attorney needs to be involved in these cases. The judges overwhelmingly felt both the volunteer and attorney should both be involved

(87%). For those remaining judges that did not feel both parties were necessary, two-thirds felt the attorney alone was sufficient (8%), and one-third felt the volunteer alone was sufficient (4%). The judges felt involvement by the GAL attorneys was very important in the dispositional stage of the case (75%), followed closely in importance in the termination of parental rights stage (72%), and the adjudicatory stage (63%).

Effects of Budget Reductions

As part of the 1995 budget reductions made by the General Assembly, the Administrative Office of the Courts, as the agency responsible for the administrative operation of the GAL program, recommended that the cuts in its budget be realized in part by reducing GAL services to dependent children and children in care over the age of 13. Based on the survey results, it appears that the judges disagree with reduction in services being made in these areas. All the judges felt GAL services are necessary for children over age 13 (100%) and a large majority (84%) felt GAL services were necessary for children found to be dependent.

Also in response to budget cuts, the General Assembly limited the length of time the GAL program was involved in the care of a child to two years, unless this time is extended by the court. The judges felt that GAL services in the later phases of child protection services cases were more important than involvement in the earlier stages. After the dispositional phase (where 87% of the judges felt GAL involvement was more than somewhat helpful), judges ranked GAL involvement as more than somewhat helpful during periodic reviews (83%) and during termination of parental rights proceedings (80%). Although many cases maybe resolved within 2 years, if not resolved within that time periodic reviews and termination of parental rights proceedings may continue beyond the 2-year time limit. Judges ranked the helpfulness of GAL services in termination of parental rights higher than involvement in the initial adjudicatory court process. (80% vs. 63%).

Survey Details

For a detailed analysis of the judges survey results see the **STATISTICAL ANALYSIS - DISTRICT COURT JUDGES QUESTIONNAIRE** attached as Attachment 1.

OTHER GAL PARTICIPANTS SURVEYS

Background

The survey also collected the opinions of other persons involved with the GAL program including GAL volunteers, GAL attorneys, DSS personnel and DSS attorneys. Of the 522 GAL volunteers surveyed, 116 responded (22%). Of the 90 GAL attorneys surveyed, 40 responded (44%). Of the 100 county departments of social services surveyed, 70 responded (70%) and of the 100 county attorneys offices surveyed, 21 responded (21%).

GAL Performance

How well volunteers are performing their duties and responsibilities is an important factor in determining whether the GAL program is successful. In addition to the judges' opinions that GAL volunteers are performing well (84% felt the volunteers were performing more than adequately), DSS personnel, who also work closely with the GAL volunteers, abused and neglected children and their families, believe the volunteers are performing well. 89% of the DSS personnel felt the volunteers were performing somewhat effectively or better. 48% felt they were performing more than somewhat effectively. This feeling is also echoed by the DSS attorneys. 45% of these attorneys felt the volunteers were performing more than somewhat effectively.

GAL attorneys who work very closely with the GAL volunteers also rank the volunteers' performance high. 100% of these attorneys felt the volunteers were performing somewhat effectively or better and 67% felt they were performing very effectively. Even 72% of the GAL volunteers rank their peers as performing very effectively.

GAL Training

Because volunteers play a significant role in the GAL services process, training is felt to be very important. Non-legally trained volunteers are asked and expected to serve as child advocates in the GAL program. In order for the legally oriented court system to continue to function efficiently, it is important that the volunteers be train to properly function in the court environment. Also because of the important role these volunteers are playing in the lives of children with special needs, volunteers need to be trained how to properly work these special children. The comfort level of volunteers is also important in retaining good volunteers in the program. Training is felt to be an important part of the retention efforts.

As noted above, the judges appear to be very satisfied with the volunteers training. 98% felt that the volunteer training was adequate or better. 65% felt the training was more than adequate. The volunteers appear to be satisfied with their training. 96% felt they were at least adequately trained and 70% felt they

were more than adequately trained. The GAL attorneys, who work very closely with the GAL volunteers and who are legally trained themselves, agreed that the volunteers are being properly trained. 99% felt volunteers were at least adequately trained and 71% felt they were more than adequately trained.

GAL Attorneys

GAL attorneys are also an important part of the court process, legally responsible for representing the best interest of the child and giving legal assistance to the GAL volunteers in the performance of their duties. How well these attorneys perform their role is also important to the success of the GAL program.

GAL attorneys are given high marks for the way in which they have been fulfilling their role. 82% of the district court judges felt GAL attorneys were performing their duties more than adequately. 61% thought they were performing very well. Only 4% of the judges thought the GAL attorneys were performing less than adequately. GAL volunteers also give GAL attorneys high ratings, with 81% believing the attorneys perform their duties very effectively. GAL attorneys also rate their fellow attorneys highly, again with 81% believing other GAL attorneys perform their duties very effectively.

DSS Performance

DSS plays the central role in abuse and neglect cases. Because the GAL program serves as a supplement to the role DSS plays in these cases, and because the GAL program has to work closely with DSS personnel, it is important to see how DSS personnel are perceived as doing their job.

Judges give DSS personnel high marks on the performance of their duties with respect to child protection services. 87% of the judges felt social services workers performed adequately or better, with 45% believing these workers are performing more than adequately. 13% of the judges felt these workers performed less than adequately. GAL volunteers also rate social services workers performance highly, with 99% believing child protection workers perform somewhat effectively or better and 93% believing foster care workers perform somewhat effectively or better. 47% of the GAL volunteers thought child protection workers were very effective, and 41% felt foster care workers were very effective. GAL attorneys tended to not rate DSS personnel quite as highly as do the volunteers. Only 30% of these attorneys felt child protection workers were performing very effectively, and only 24% felt foster care workers were performing very effectively.

DSS Attorney Performance

The Department of Social Services is represented before the court by an attorney in all abuse and neglect matters. The attorney maybe employed by

DSS, maybe a member of the County Attorney's staff, or may be an attorney in private practice hired on contract for certain DSS matters. Again because of the importance of the DSS attorney in the process and because of the relationship this attorney has with the GAL attorney and the GAL volunteer, it is important to see how DSS attorneys are perceived as doing their job.

Judges generally believe DSS attorneys are performing their duties well. 77% of the judges felt DSS attorneys were performing more than adequately, while half (50%) felt they were performing very well. GAL attorneys gave their legal colleagues very high ratings. 74% of the GAL attorneys thought DSS attorneys performed their duties very effectively. GAL volunteers also rated the DSS attorneys job high, with 57% believing these attorneys perform very effectively.

GAL AND DSS RELATIONSHIPS

Background

The GAL program and the Departments of Social Services work very closely in abuse and neglect cases. Since the statutory duty for investigating and pursuing abuse and neglect cases rest with DSS, the department is primarily responsible for collecting the information concerning the case and providing for the protective services for the child. Both DSS and GAL have a common purpose in working for the best interest of the child. DSS has a broad responsibility for all abuse and neglected children in the county and may be constrained by the resources available to address the child's needs, while the GAL only has responsibility as it relates to each individual child without restraint. Sometimes the perception of what is in the best interest of the child differs from the point of view of the advocate. Accordingly, on occasion GAL and DSS find themselves as adversaries disagreeing over what is best for a child. Because much of the information the GAL needs to do their job is collected by DSS, how well these different groups work together is important in determining how successful the needs of the child are being addressed.

GAL and DSS Relationship

Generally the relationship between GAL volunteers and DSS personnel is felt to be good. 85% of the GAL volunteers felt their relationship with social workers was acceptable or better, while 89% of the DSS personnel felt their relationships with GAL volunteers was acceptable or better. 72% of the GAL volunteers and 72% of the GAL attorneys felt their relationship with their social workers was good or very good, while 61% of the DSS's and 52% of the DSS attorneys felt the same way.

GAL and GAL attorneys also generally feel that the amount of contact they are able to have with their social services worker is sufficient. 85% of the

volunteers and 84% of the attorneys feel that the frequency of their contact with the social worker is sufficient.

GAL/DSS Degree of Agreement

GAL volunteers and DSS generally agree on recommendations to be made to the court in abuse and neglect cases, although DSS workers perceive this agreement to be more frequent than do GAL volunteers and DSS attorneys. DSS personnel believe they agree with the GAL on recommendations in 77% of the cases, DSS attorneys believe there is agreement in 72% of the cases, GAL volunteers believe there is agreement 70% of the time, and GAL attorneys believe there is agreement 67% of the time. Sometimes there is initial disagreement, but after discussions and negotiations on possible recommendations, the GAL and DSS ultimately agree on the same recommendation. GAL volunteers and GAL attorneys perceive that this happens 20% of the time, DSS attorneys perceive it to happen 19% of the time, and DSS personnel perceive it to happen 15% of the time. Going to court with different recommendations is rare. GAL attorneys believe they go to court with a different recommendation than DSS in about 12% of the cases. Volunteers believe these types of disagreements arise in 9% of the cases, DSS attorneys believe it happens 8% of the time, and DSS personnel believes it happens 7% of the time.

When GAL and DSS do disagree on recommendations to be made to the court all the parties generally agree that the areas of disagreement are most often over placement decisions, followed by visitation decisions, third by termination of parental rights and adoption placement, and fourth by mental health needs.

Perceived Need for GAL Services

As discussed previously, judges feel very strongly (96%) that GAL services are needed to adequately serve the best interest of abused and neglected children. Both GAL volunteers and GAL attorneys, and DSS workers and DSS attorneys agree with the judges, but to varying degrees

GAL volunteers and GAL attorneys believe more strongly that GAL services are needed. All volunteers and GAL attorneys (100% of each group) believe these services are needed at least somewhat. 87% of the volunteers believe their services are much needed and 67% of the GAL attorneys believe they are much needed.

While at least 65% of all DSS workers and DSS attorneys believe GAL services are at least somewhat needed (82% of workers and 66% attorneys), 7% of the DSS workers and 27% of the DSS attorneys believe these services are not needed.

As to the question of what extent the need for GAL services is being met, at least 85% of the GAL volunteers and GAL attorneys believe the need is being

met to an adequate extent or better. 68% of the DSS workers agree that the need is being met to an adequate extent or better, but 53% of the DSS attorneys felt the need is less than adequately being met.

All the parties surveyed agree that most important change needed to meet the unmet need for GAL services is more volunteers. This solution was mentioned by 81% of the GAL volunteers, 70% of the GAL attorneys, 58% of the DSS workers, and 50% of the DSS attorneys. The second most mentioned solution was additional volunteer training. This solution was mentioned by 58% of the DSS workers, 37% of the GAL attorneys, 28% of the GAL volunteers, and 25% of the DSS attorneys. The third most mentioned solution was improved communications. This solution was mentioned by 50% of the DSS workers, 37% of the GAL volunteers, 27% of the GAL attorneys and 25% of the DSS attorneys.

Survey Details

For a detailed analysis of the GAL volunteers, GAL attorneys, DSS personnel and DSS attorneys survey results see attached:

- Attachment 2 - **Statistical Analysis - GAL Volunteers Questionnaire**
- Attachment 3 - **Statistical Analysis - GAL Attorneys Questionnaire**
- Attachment 4 - **Statistical Analysis - DSS Personnel Questionnaire**
- Attachment 5 - **Statistical Analysis - DSS Attorney Questionnaire**

Attachment 1

STATISTICAL ANALYSIS - DISTRICT COURT JUDGES QUESTIONNAIRE (193 Judges Questioned, 79 Judges Responded, 40.9 % Response Rate)

Question #

1. How often do you hear abuse and neglect cases?

	<u>Monthly</u>		<u>Weekly</u>	
	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>
1 x	6	9.5	6	9.5
2 x	29	46.0	4	6.3
3 x	15	23.8	3	4.8

Total Respondents this question = 63

Average frequency of hearing juvenile cases - 3 times a month

2. How much do you rely on recommendations and information from the following persons?

	<u>Heavily</u>		<u>Somewhat</u>		<u>Do Not</u>		<u>Total</u>
	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	<u>#R</u>
GAL Vol.	56	71.8	21	26.9	1	1.3	78
GAL Atty	46	59.0	31	39.7	1	1.3	78
DSS Wkr	48	60.8	31	39.2	0	0.0	79
DSS Atty	38	48.1	41	51.9	0	0.0	79
Expert Wit.	48	63.2	28	36.8	0	0.0	76

3. To what extent are roles and responsibilities of GAL volunteers and social service workers unnecessarily duplicative?

	1 <u>Significant</u>	2	3 <u>Some</u>	4	5 <u>None</u>	Total <u>#R</u>
#R	3	3	30	21	22	79
%R	3.8	3.8	38.0	26.6	27.8	

4. How well trained are GAL volunteers?

	1 <u>Very well</u>	2	3 <u>Adequately</u>	4	5 <u>Inadequately</u>	Total <u>#R</u>
#R	28	24	26	1	0	79
%R	35.4	30.4	32.9	1.3	0.0	

5. How well do social service workers perform their duties with respect to child protection?

	1 <u>Very well</u>	2	3 <u>Adequately</u>	4	5 <u>Poorly</u>	Total <u>#R</u>
#R	11	24	32	10	0	77
%R	14.3	31.2	41.5	13.0	0	

6. How well do GAL volunteers perform their duties with respect to serving the best interest of children they represent?

	1	2	3	4	5	Total
	<u>Very well</u>		<u>Adequately</u>		<u>Poorly</u>	<u>#R</u>
#R	40	27	12	0	0	79
%R	50.6	34.2	15.2	0.0	0.0	

7. How well do GAL attorneys perform their duties?

	1	2	3	4	5	Total
	<u>Very well</u>		<u>Adequately</u>		<u>Poorly</u>	<u>#R</u>
#R	47	16	10	2	1	76
%R	61.8	21.1	13.2	2.6	1.3	

8. How well do attorneys representing DSS in child abuse and neglect cases perform their duties?

	1	2	3	4	5	Total
	<u>Very well</u>		<u>Adequately</u>		<u>Poorly</u>	<u>#R</u>
#R	38	21	12	5	0	76
%R	50.0	27.6	15.8	6.6	0	

9. Is the GAL program providing a valuable service to abused and neglected children?

	<u>Yes</u>	<u>No</u>	<u>Total #R</u>
#R	75	3	78
%R	96.2	3.8	

10. Is the GAL program providing a valuable services to the court process?

	<u>Yes</u>	<u>No</u>	<u>Total #R</u>
#R	75	3	78
%R	96.2	3.8	

11 - 15 How helpful are GAL services to the court in ensuring that the best interests of children are served in the following stages of the case?

	<u>1</u>		<u>2</u>		<u>3</u>		<u>4</u>		<u>5</u>		<u>Total #R</u>
	<u>Very</u>				<u>Somewhat</u>			<u>Not</u>			
	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	
Adjudicatory	28	35.9	21	26.9	19	24.4	7	9.0	3	3.8	78
Dispositional	53	67.1	17	21.5	6	7.6	2	2.5	1	1.3	79
Periodic Review	46	59.0	19	24.4	10	12.8	2	2.6	1	1.3	78
Termination of Parental Rights	41	53.9	20	26.3	10	13.2	4	5.3	1	1.3	76
Post-termination of Parental Rights	22	31.9	20	29.0	19	27.5	5	7.2	3	4.3	69

16. Is it necessary in order to protect the best interest of children to have both a GAL volunteer and a GAL attorney participate in the case?

Yes, both are necessary	#R	62	%R	87.3
No, GAL volunteer is sufficient	#R	3	%R	4.2
No, GAL attorney is sufficient	#R	6	%R	8.5
Total		71		100.0

17. How important is the participation of the GAL attorney in different stages of case?

	1		2		3		4		5		Total #R
	<u>Very</u>				<u>Somewhat</u>				<u>Not</u>		
	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	
Adjudicatory	48	62.3	11	14.3	8	10.4	7	9.1	3	3.9	77
Dispositional	59	75.6	13	16.7	3	3.8	1	1.3	2	2.6	78
Periodic Review	33	42.3	14	18.0	21	26.9	6	7.7	4	5.1	78
Termination of Parental Rights	55	72.4	7	9.2	7	9.2	5	6.6	2	2.6	76
Post-termination of Parental Rights	23	29.9	16	20.8	20	26.0	12	15.6	6	7.8	77

18. Are GAL services necessary for dependent children?

<u>Yes</u>		<u>No</u>		<u>Total #R</u>
<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	
59	84.3	11	15.7	70

19. Are GAL services necessary for children over age 13?

<u>Yes</u>		<u>No</u>		<u>Total #R</u>
<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	
69	100	0	0.0	69

20. Are GAL services needed to adequately serve best interests of abused and neglected children?

<u>Yes</u>		<u>No</u>	<u>Total #R</u>
<u>#R</u>	73	3	76
<u>%R</u>	96.1	3.9	

21. In your opinion, what can be done to improve the GAL program?

22. Please feel free to share any other comments you may have about services to abused, neglected, and dependent children.

**RETURN SURVEY TO:
G. WATSON
NC GENERAL ASSEMBLY
401 LEGISLATIVE OFFICE BUILDING
RALEIGH, NC. 27611/FAX (919) 715-5459**

DISTRICT COURT JUDGES SURVEY SUMMARY OF COMMENTS

As might be expected, not all judges added comments or explanatory remarks after each question. However, many judges did offer comments and overall these tended to be very positive about the GAL program. Also, even though comments on a given question only represented a fraction of the number of respondents to that question, the comments tended to support the overall survey results for the particular question. Following is a brief summary of overall comments for selected questions/topics. The number in () indicates the number of judges who commented on the question.

Training (3). About 2/3 of the judges rated GAL volunteers as 'well - very well' trained. Only three judges made suggestions about areas in which more training is necessary (cultural sensitivity, court process, legal requirement for reunification of family).

Duplication of service (7). Responses to question #2 regarding unnecessary duplication of services indicated there was some but not a lot of duplication; comments tended to explain that although there was some duplication, it is sometimes necessary to adequately protect the child's interest.

Performance of duties. With respect to performance of duties by GAL/DSS persons, comments again followed the overall statistics for the question. Almost half the judges rated DSS worker performance as "adequate"; (12) judges added comments on this question offering reasons for the rating (wide range of performance among individuals; lack of resources to meet case loads; inherently conflicting relationship with parents makes communication more difficult, etc.). Comments on GAL volunteer performance were very similar to one another; (9) judges offered comments on this question, most related to the fact that volunteers are not burdened by policy and budget constraints, have lighter caseloads than DSS workers, and are very dedicated to the task. Although DSS and GAL attorney performance tended to be regarded similarly by judges, the (4) judges who commented on GAL attorney performance were more positive in their comments, whereas the (7) judges who commented on DSS attorney performance tended to give mixed reviews in their comments (performance varies over counties; reluctance to file petitions; some unfamiliar with facts; excellent preparation and knowledge of issues and law; rely heavily on DSS attorney.)

Need for both GAL volunteer and attorney participation (15). Comments tended to reflect the overall response (87.5%) that both are necessary. Generally, comments indicated that attorneys are necessary to adequately deal with legal issues (procedural, evidentiary, adversarial relationship), and GAL volunteers provides the details about the case and what is best for the child that attorneys often do not have the time to ascertain personally.

Necessity for GAL services (12). Judges were asked if GAL services are needed to adequately serve the best interests of abused and neglected

children. Comments most often made: provides review process independent of policy or budgetary concerns; provides encouragement, support, and hope to the child; they are the only one advocating exclusively for the child.

Suggestions to improve GAL Program (20). Question 21 was one of two open-ended questions on the survey; it asked judges to suggest **what can be done to improve the GAL program**. The areas most often suggested are: increase funding, increase number of volunteers, and enhance training.

Attachment 2

STATISTICAL ANALYSIS - GAL VOLUNTEERS QUESTIONNAIRE
 (522 volunteers questioned, 116 volunteers responded, 22% Response Rate)

Question #

2. How well trained are GAL volunteers?

	1 Very Well	2	3 Adequately	4	5 Inadequate	Total #R
#R	45	37	32	1	0	115
%R	39.1	32.2	27.8	0.9	0.0	

3. On average, how many cases are you responsible for at one time?

Average - 3.5 cases

Mean - 2.5 cases

Total #R - 112

Based on the number of cases you are responsible for at one time, do you consider this caseload to be:?

	1 Very Heavy	2	3 Appropriate	4	5 Too Light	Total #R
#R	1	7	101	2	0	111
%R	0.9	6.3	91.0	1.8	0	

4. How often are you in contact with the child you are representing?

	Monthly		Weekly	
	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>
1x	44	38.3	22	19.1
2x	31	27.0	5	4.3
3x	12	10.4	1	0.9

Total Respondents this question - 115

Is the frequency of your contact with the child sufficient?

	<u>YES</u>	<u>NO</u>	<u>Total #R</u>
#R	94	10	104
%R	90.4	9.6	

5. How often are you in contact with the county social services worker assigned to the case?

	Monthly		Weekly	
	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>
1x	43	39.1	14	12.7
2x	28	25.5	4	3.6
3x	20	18.2	1	0.9

Total Respondents this question - 110

Is the frequency of your contact with the social services worker sufficient?

	<u>YES</u>	<u>NO</u>	<u>Total #R</u>
#R	90	15	105
%R	85.7	14.3	

6. How would you describe your relationship with the county social service worker assigned to a given case?

	<u>#R</u>	<u>%R</u>
Very Good	44	39.6
Good	36	32.4
Acceptable	16	14.4
Fair	10	9.0
Poor	5	4.5

Total Respondents this question - 111

7. In what percentage of the cases do you generally agree, initially disagree then negotiate and ultimately reach agreement, or disagree at the court hearing/disposition, with the recommendations of the social services worker?

	<u>Agree</u>	<u>Negotiate</u>	<u>Disagree</u>	<u>Total #R</u>
%R	70.9	20.6	9.5	103

8. On what issues do you most often disagree with the DSS worker?

	<u>#R</u>	<u>%R</u>
Placement	60	64.5
Visitation	35	37.6
Educational needs	11	11.8
Medical needs	7	7.5
Mental health needs	20	21.5
TPR and adoption	38	40.9
Other	15	16.1

Total Respondents this question - 93

9. Based on your observations, how effectively do county social workers perform their duties?

	Very Effectively		Somewhat Effectively		Not Effectively		Total #R
	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	
Child Protection	50	47.6	54	51.4	1	1.0	105
Foster Care	43	41.7	53	51.5	7	6.8	103
Attorney	59	57.8	35	34.3	8	7.8	102

10. How effectively do other GAL workers perform their duties?

	Very Effectively		Somewhat Effectively		Not Effectively		Total #R
	#R	%R	#R	%R	#R	%R	
Staff	105	93.8	7	6.2	0	0.0	112
Volunteer	70	72.9	26	27.1	0	0.0	96
Attorney	90	81.8	19	17.3	1	0.9	110

11. To what extent are GAL services needed in your district?

	1 Much Needed	2	3 Somewhat Needed	4	5 Not Needed	Total #R
#R	101	12	2	0	0	115
%R	87.8	10.4	1.7	0.0	0.0	

12. To what extent is this need being met in your district?

	1 Great Extent	2	3 Adequate Extent	4	5 Not Met	Total #R
#R	25	21	37	11	3	97
%R	25.8	21.6	38.1	11.3	3.1	

13. What would it take for the need to be more effectively met?

	<u>More</u> <u>Volunteers</u>	<u>Add'l.</u> <u>Training</u>	<u>More</u> <u>GAL Support</u>	<u>Improved</u> <u>Communication w/DSS</u>	<u>Other</u>
#R	71	25	15	33	20
%R	81.6	28.7	17.2	37.9	23.0

Respondents to question - 87

14. What do you think could be done to improve GAL services in your district?

15. Please feel free to share any other comments you may have about the GAL program in your district, or about services to abused, neglected, and dependent children, generally.

**RETURN SURVEY TO:
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Attachment 3

STATISTICAL ANALYSIS - GAL ATTORNEYS QUESTIONNAIRE
 (90 GAL Attorneys questioned, 40 GAL Attorneys responded, 44% Response rate)

Question #

2. How well trained are GAL volunteers?

	1 Very Well	2	3 Adequately	4	5 Inadequate	Total #R
#R	16	5	8	1	0	30
%R	53.3	16.7	26.7	3.3	0.0	

3. On average, how many cases are you responsible for at one time?

Average - 47 cases

Mean - 30 cases

Total #R - 38

Based on the number of cases you are responsible for at one time, do you consider this caseload to be:?

	1 Very Heavy	2	3 Appropriate.	4	5 Too Light	Total #R
#R	2	10	24	3	0	39
%R	5.1	25.6	61.5	7.7	0.0	

4. How often are you in contact with the child you represent?

	Monthly		Weekly	
	#R	%R	#R	%R
1x	15	83.3	0	0.0
2x	2	11.1	0	0.0
3x	1	5.6	0	0.0

Total Respondents to this question - 18

Is the frequency of your contact with the child sufficient?

	<u>YES</u>	<u>NO</u>	<u>Total #R</u>
#R	20	5	25
%R	80	20	

5. How often are you in contact with the county social services worker assigned to the case?

	Monthly		Weekly	
	#R	%R	#R	%R
1x	12	37.5	2	6.3
2x	8	25.0	1	3.1
3x	8	25.0	1	3.1

Total Respondents this question - 32

Is the frequency of your contact with the social services worker sufficient?

	<u>YES</u>	<u>NO</u>	<u>Total #R</u>
#R	28	5	25
%R	84.8	15.2	

6. How would you describe your relationship with the county social service worker assigned to a given case?

	<u>#R</u>	<u>%R</u>
Very Good	11	27.5
Good	18	45.0
Acceptable	11	27.5
Fair	0	0.0
Poor	0	0.0

Total Respondents this question - 40

7. In what percentage of the cases do you generally agree, initially disagree, then negotiate and ultimately reach agreement, or disagree at the court hearing/disposition, with the recommendations of the social services worker?

	<u>Agree</u>	<u>Negotiate</u>	<u>Disagree</u>	<u>Total #R</u>
%R	67.3	20.4	12.3	39

8. On what issues do you most often disagree with the DSS worker?

	<u>#R</u>	<u>%R</u>
Placement	34	85.0
Visitation	25	62.5
Educational needs	7	17.5
Medical needs	5	12.5
Mental health needs	17	42.5
TPR and adoption	22	55.5
Other	5	12.5

Total Respondents this question - 39

9. Based on your observations, how effectively do county social workers perform their duties?

	<u>Very Effectively</u>		<u>Somewhat Effectively</u>		<u>Not Effectively</u>		<u>Total #R</u>
	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	<u>#R</u>	<u>%R</u>	
Child Protection	12	30	28	70	0	0.0	40
Foster Care	9	24	26	70	2	.5	37
DSS Atty	29	74	10	25	0	0.0	39

10. How effectively do other GAL workers perform their duties?

	Very Effectively		Somewhat Effectively		Not Effectively		Total #R
	#R	%R	#R	%R	#R	%R	
Staff	34	87.1	5	12.8	0	0.0	39
Volunteer	27	67.5	13	32.5	0	0.0	40
Attorney	23	82.1	5	17.8	0	0.0	28

11. To what extent are GAL services needed in your district?

	1	2	3	4	5	Total #R
	Much Needed		Somewhat Needed		Not Needed	
#R	27	11	2	0	0	40
%R	67.5	27.5	5.0	0.0	0.0	

12. To what extent is this need being met in your district?

	1	2	3	4	5	Total #R
	Great Extent		Adequate Extent		Not Met	
#R	6	15	12	5	0	38
%R	15.8	39.5	31.6	13.2	0.0	

13. What will it take for the need to be more effectively met?

	<u>More</u> <u>Volunteers</u>	<u>Add'l.</u> <u>Training</u>	<u>More</u> <u>GAL Support</u>	<u>Improved</u> <u>Communication w/DSS</u>	<u>Other</u>
#R	28	15	3	11	0
%R	70	37.5	7.5	27.5	0.0

14. What do you think could be done to improve GAL services in your district?

15. Please feel free to share any other comments you may have about the GAL program in your district, or about services to abused, neglected, and dependent children, generally.

**RETURN SURVEY TO:
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Attachment 4

STATISTICAL ANALYSIS - DSS PERSONNEL QUESTIONNAIRE
 (100 Counties Questioned, 70 Counties responded)

Question #

2. How often are you or your staff in contact with the Guardian Ad Litem volunteer assigned to the case?

	Monthly		Weekly	
	#R	%R	#R	%R
1 x	23	46.9	3	6.1
2 x	13	26.5	3	6.1
3 x	7	14.3	0	0.0

Total Respondents this question = 49

3. How would you describe the overall relationship you or your staff have with the GAL volunteer on a given case?

	1 Very good	2 Good	3 Acceptable	4 Fair	5 Poor	Total #R
#R	18	24	19	5	2	68
%R	26.5	35.3	27.9	7.4	2.9	

4. How effectively do the GAL volunteers you or your staff have worked with perform their duties.

	1 <u>Very</u>	2	3 <u>Somewhat</u>	4	5 <u>Not</u>	Total <u>#R</u>
#R	13	19	27	5	2	66
%R	19.7	28.8	40.9	7.6	3.0	

5. In what percentage of child abuse and neglect cases do you generally agree, initially disagree, then negotiate and ultimately reach agreement, or disagree at the court hearing/disposition, with the recommendations of GAL volunteers?

	<u>Agree</u>	<u>Negotiate</u>	<u>Disagree</u>	Total
%R	77.7	15.2	7.1	66

6. On what issues do you most often disagree with the GAL?

	<u>#R</u>	<u>%R</u>
Placement	45	70.3
Visitation	38	59.4
Educational needs	4	6.3
Medical needs	2	3.1
Mental health needs	15	23.4
TPR and adoption	20	31.3
Other	18	28.1

Total Respondents this question - 64

7. To what extent are GAL services needed in your county?

	1 Much Needed	2	3 Somewhat Needed	4	5 Not Needed	Total #R
#R	16	16	23	7	5	67
%R	23.9	23.9	34.3	10.4	7.5	

8. To what extent is the need for GAL services in your county being met?

	1 Great Extent	2	3 Adequate Extent	4	5 Not Met	Total #R
#R	10	17	18	15	7	67
%R	14.9	25.4	26.9	22.4	10.4	

9. If the need for GAL services is not being met, what do you think it would take for the need to be more effectively met.

	More Volunteers	Add'l. Training	More GAL Support	Improved Communication	Other	Total #R
#R	29	29	10	25	13	50
%R	58.0	58.0	20.0	50.0	26.0	

10. What do you think could be done to improve GAL services in your county?
11. Please feel free to share any other comments you may have about the GAL program in your area, or about services to abuse, neglected, and dependent children, in general.

**RETURN SURVEY TO:
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Attachment 5

STATISTICAL ANALYSIS - COUNTY/DSS ATTORNEY QUESTIONNAIRE
 (100 Counties Questioned, 21 Counties responded, 21% Response rate)
 (18 County attorneys, 3 DSS attorneys)

Question #

2. How often are you or your staff in contact with the Guardian Ad Litem volunteer assigned to the case?

	Monthly		Weekly	
	#R	%R	#R	%R
1 x	6	50.0	1	8.3
2 x	3	25.0	0	0.0
3 x	1	8.3	1	8.3

Total Respondents this question = 12

3. How would you describe the overall relationship you or your staff have with the GAL volunteer on a given case?

	1 Very Good	2 Good	3 Acceptable	4 Fair	5 Poor	Total #R
#R	5	5	2	6	1	19
%R	26.3	26.3	10.5	31.6	5.3	

4. How effectively do the GAL volunteers you or your staff have worked with perform their duties.

	1 <u>Very</u>	2	3 <u>Somewhat</u>	4	5 <u>Not</u>	Total <u>#R</u>
#R	3	6	6	2	3	20
%R	15.0	30.0	30.0	10.0	15.0	

5. In what percentage of child abuse and neglect cases do you generally agree, initially disagree, then negotiate and ultimately reach agreement, or disagree at the court hearing/disposition, with the recommendations of GAL volunteers?

	<u>Agree</u>	<u>Negotiate</u>	<u>Disagree</u>	<u>Total</u>
%R	72.5	19.5	8.0	17

6. On what issues do you most often disagree with the GAL?

	<u>#R</u>	<u>%R</u>
Placement	11	61.1
Visitation	8	44.4
Educational needs	2	11.1
Medical needs	1	5.6
Mental health needs	5	27.8
TPR and adoption	6	33.3
Other	4	22.2

Total Respondents this question - 18

7. To what extent are GAL services needed in your county?

	1 Much Needed	2	3 Somewhat Needed	4	5 Not Needed	Total #R
#R	8	0.0	4	1	5	18
%R	44.4	0.0	22.2	5.6	27.8	

8. To what extent is the need for GAL services in your county being met?

	1 Great Extent	2	3 Adequate Extent	4	5 Not Met	Total #R
#R	2	3	2	6	2	15
%R	13.3	20.0	13.3	40.0	13.3	

9. If the need for GAL services is not being met, what do you think it would take for the need to be more effectively met.

	More Volunteers	Add'l. Training	More GAL Support	Improved Communication	Other	Total #R
#R	6	3	2	3	6	12
%R	50.0	25.0	16.7	25.0	50.0	

10. What do you think could be done to improve GAL services in your county?
11. Please feel free to share any other comments you may have about the GAL program in your area, or about services to abuse, neglected, and dependent children, in general.

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ARTICLE 39.

*Guardian Ad Litem Program.***§ 7A-489. Office of Guardian Ad Litem Services established.**

There is established within the Administrative Office of the Courts an Office of Guardian Ad Litem Services to provide services in accordance with G.S. 7A-586 to abused, neglected, or dependent juveniles involved in judicial proceedings, and to assure that all participants in these proceedings are adequately trained to carry out their responsibilities. Beginning on July 15, 1983, and ending July 1, 1987, the Administrative Office of the Courts shall establish in phases a statewide guardian ad litem program comprised of local programs to be established in all district court districts of the State. Each local program shall consist of volunteer guardians ad litem, at least one program attorney, a program coordinator who is a paid State employee, and such clerical staff as the Administrative Office of the Courts in consultation with the local program deems necessary. The Administrative Office of the Courts shall promulgate rules and regulations necessary and appropriate for the administration of the program. (1983, c. 761, s. 160; 1987 (Reg. Sess., 1988), c. 1037, s. 32; c. 1090, s. 7.)

§ 7A-490. Implementation and administration.

(a) Local Programs. — The Administrative Office of the Courts shall, in cooperation with each chief district court judge and other personnel in the district court district, implement and administer the program mandated by this Article. Local programs shall be established in eight district court districts in fiscal year 1983-84. Where a local program has not yet been established in accordance with this Article, the district court district shall operate a guardian ad litem program approved by the Administrative Office of the Courts.

(b) Advisory Committee Established. — The Director of the Administrative Office of the Courts shall appoint a Guardian Ad Litem Advisory Committee consisting of at least five members to advise the Office of Guardian Ad Litem Services in matters related to this program. The members of the Advisory Committee shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions generally. (1983, c. 761, s. 160; 1987 (Reg. Sess., 1988), c. 1037, s. 33.)

§ 7A-491. Conflict of interest or impracticality of implementation.

If a conflict of interest prohibits a local program from providing representation to an abused, neglected, or dependent juvenile, the court may appoint any member of the district bar to represent said juvenile. If the Administrative Office of the Courts determines that within a particular district court district the implementation of a

local program is impractical, or that an alternative plan meets the conditions of G.S. 7A-492, the Administrative Office of the Courts shall waive the establishment of the program within the district. (1983, c. 761, s. 160; 1987 (Reg. Sess., 1988), c. 1037, s. 34; c. 1090, s. 8.)

§ 7A-492. Alternative plans.

A district court district shall be granted a waiver from the implementation of a local program if the Administrative Office of the Courts determines that the following conditions are met:

- (1) An alternative plan has been developed to provide adequate guardian ad litem services for every child consistent with the duties stated in G.S. 7A-586; and
- (2) The proposed alternative plan will require no greater proportion of State funds than the district court district's abuse and neglect caseload represents to the State's abuse and neglect caseload. Computation of abuse and neglect caseloads shall include such factors as child population, number of substantiated child abuse and neglect reports, number of child abuse and neglect petitions, number of abused and neglected children in care to be reviewed pursuant to G.S. 7A-657, nature of the district's district court caseload, and number of petitions to terminate parental rights.

When an alternative plan is approved pursuant to this section, the Administrative Office of the Courts shall retain authority to monitor implementation of the said plan in order to assure compliance with the requirements of this Article and G.S. 7A-586. In any district court district where the Administrative Office of the Courts determines that implementation of an alternative plan is not in compliance with the requirements of this section, the Administrative Office of the Courts may implement and administer a program authorized by this Article. (1983, c. 761, s. 160; 1987 (Reg. Sess., 1988), c. 1037, s. 35.)

§ 7A-493. Civil liability of volunteers.

Any volunteer participating in a judicial proceeding pursuant to the program authorized by this Article shall not be civilly liable for acts or omissions committed in connection with the proceeding if he acted in good faith and was not guilty of gross negligence. (1983, c. 761, s. 160.)

ARTICLE 39A.

Custody and Visitation Mediation Program.

§ 7A-494. Custody and Visitation Mediation Program established.

(a) The Administrative Office of the Courts shall establish a Custody and Visitation Mediation Program to provide statewide and uniform services in accordance with G.S. 50-13.1 in cases involving unresolved issues about the custody or visitation of minor children.

of an order authorizing
urt finds that continued
rotection of the juvenile.
venile's placement were
to the juvenile, the court
e in the absence of such
1981, c. 469, s. 13; 1987
Sess., c. 27, s. 1.)

in this subsection" for "five
day period" and substituted
iod" for "five calendar period";
ion (b) substituted "the right to
representation" for "his right
a attorney represent him," sub-
he juvenile" for "he" preceding
; substituted "the juvenile's
r "his parent" in subsection (c);
d "the juvenile" for "him" in
n (e)(1); substituted "the
"he" in subsection (f); in sub-
) inserted "secure" preceding
and added the second sentence;
l subsection (g1).

Periodicals. — For survey of
ly law, see 58 N.C.L. Rev. 1471

n unauthorized determination
rits of the case. There is no
atutory authority allowing the
dismiss the petitions at a five-
ng. In re Guarante, 109 N.C.
427 S.E.2d 883 (1993).
a In re Bass, 77 N.C. App. 110,
1 779 (1985); In re Safriet, 112
747, 436 S.E.2d 898 (1993).

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574, and 7A-575 may be
munication are imprac-
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ARTICLE 47.

Basic Rights.

§ 7A-584. Juvenile's right to counsel; presumption of indigence.

(a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. In any proceeding in which delinquency is alleged, the judge shall appoint counsel unless counsel is retained for the juvenile.

(b) All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency. (1979, c. 815, s. 1.)

Legal Periodicals. — For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

For article, "Juvenile Justice in Transition — A New Juvenile Code for North

Carolina," see 16 Wake Forest L. Rev. 1 (1980).

For article on rights and interests of parent, child, family and state, see 4 Campbell L. Rev. 85 (1981).

CASE NOTES

A juvenile appellant is presumed indigent. In re Bullabough, 89 N.C. App. 171, 365 S.E.2d 642 (1988).

Cited in In re Wharton, 305 N.C. 565, 290 S.E.2d 688 (1982).

§ 7A-585. Appointment of guardian.

In any case when no parent appears in a hearing with the juvenile or when the judge finds it would be in the best interest of the juvenile, the judge may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for him and may represent the juvenile in legal actions before any court. The guardian shall also have authority to consent to certain actions on the part of the juvenile in place of the parent including marriage, enlisting in the armed forces, and undergoing major surgery. The authority of the guardian shall continue until the guardianship is terminated by order, until the juvenile is emancipated pursuant to Article 56, or until the juvenile reaches the age of majority. (1979, c. 815, s. 1.)

Legal Periodicals. — For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

CASE NOTES

Removal of Guardian. — A legal guardian of a child's person, unlike a mere custodian, is not removable for a mere change of circumstances; unfitness

or neglect of duty must be shown. In re Williamson, 77 N.C. App. 53, 334 S.E.2d 428 (1985), cert. denied, 316 N.C. 194, 341 S.E.2d 584 (1986).

§ 7A-586. Appointment and duties of guardian ad litem.

(a) When in a petition a juvenile is alleged to be abused or neglected, the judge shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the judge may appoint a guardian ad litem to represent the juvenile. The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions under this Subchapter where they have been appointed. The appointment shall be made pursuant to the program established by Article 39 of this Chapter unless representation is otherwise provided pursuant to G.S. 7A-491 or G.S. 7A-492. The appointment shall terminate at the end of two years. Upon motion of any party including the guardian ad litem, or upon the judge's own motion, the guardian ad litem may be reappointed upon a showing of good cause. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the child's legal rights through the dispositional phase of the proceedings, and after disposition when necessary to further the best interests of the child. The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the judge at the dispositional hearing; and to protect and promote the best interest of the juvenile until formally relieved of the responsibility by the judge.

(b) The judge may order the Department of Social Services or the guardian ad litem to conduct follow-up investigations to insure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met. The judge may also authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein he may be called on to testify in a matter relating to abuse.

(c) The judge may grant the guardian ad litem the authority to demand any information or reports whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. Neither the physician-patient privilege nor the husband-wife privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem and no disclosure of any information or reports shall be made to anyone except by order of the judge or unless otherwise provided by law in Chapter 7A. (1979, c. 815, s. 1; 1981, c. 528; 1983, c. 761, s. 159; 1987 (Reg. Sess., 1988), c. 1090, s. 5; 1993, c. 537, s. 1; 1995, c. 324, s. 21.13.)

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 21.12, provides for the Legislative Research Commission to study the Guardian Ad Litem program in the Division of Social Services and to report its findings to the

1995 General Assembly.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, and applicable to petitions filed and requests for information made on or after that date, inserted the subsection designations, inserted the second sentence of subsection (a), inserted "to offer evidence and examine witnesses at adjudication" in the last sentence of subsection (a), and added "or unless otherwise provided by law in Chapter 7A" in the last sentence of subsection (c).

The 1995 amendment, effective July 1, 1995, in subsection (a) added the fifth

and sixth sentences, substituted "through the dispositional phase of the proceedings, and after disposition when necessary to further the best interests of the child" for "within the proceeding" in the seventh sentence, and added "program" following "guardian as litem" in the last sentence.

Legal Periodicals. — For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

For comment, "The Child Abuse Amendments of 1984: Congress Is Calling North Carolina to Respond to the Baby Doe Dilemma," 20 Wake Forest L. Rev. 975 (1984).

CASE NOTES

This section does not prevent the application of other pertinent statutory provisions. In re Scarce, 81 N.C. App. 531, 345 S.E.2d 404, cert. denied, 318 N.C. 415, 349 S.E.2d 589 (1986).

Whether appointment of a guardian ad litem for a minor is necessary is controlled by § 1A-1, Rule 17(b). In re Scarce, 81 N.C. App. 531, 345 S.E.2d 404, cert. denied, 318 N.C. 415, 349 S.E.2d 589 (1986).

Authority of Guardian ad Litem to Inquire as to Child's Adoption. — It was the duty and right of guardian ad litem to inquire into Department of Social Services' handling of child's adoption, and it was within the district court's jurisdiction to order DSS to turn over requested information, despite its confidential nature. In re N.C.L., 89 N.C. App. 79, 365 S.E.2d 213, cert. denied, 322 N.C. 481 370 S.E.2d 226 (1988).

Continuing Duty to Conduct Follow-Up Investigations. — This section gives the guardian ad litem many more responsibilities and duties than a guardian ad litem ordinarily has. The guardian ad litem has the continuing duty to conduct follow-up investigations and to report to the court when the needs of the juveniles are not being met. Wilkinson v. Riffel, 72 N.C. App. 220, 324 S.E.2d 31 (1984).

Right of Guardian to Confidential

Information. — This section specifically gives the court the power to order that the guardian ad litem have confidential information which in the opinion of the guardian ad litem is relevant to the case. Wilkinson v. Riffel, 72 N.C. App. 220, 324 S.E.2d 31 (1984).

The court may order the release of confidential information to a guardian ad litem if the guardian ad litem needs the information to determine whether the needs of the juveniles are being met. Wilkinson v. Riffel, 72 N.C. App. 220, 324 S.E.2d 31 (1984).

District Court's Jurisdiction Held Not Ended by Notice of Adoption Petition. — District court jurisdiction attached on March 25, 1987, when guardian ad litem filed a motion in district court to compel Department of Social Services (DSS) to grant his requests to visit child and to obtain information on any prospective adoptive parents, and subsequent notice, received on March 31, 1987, to the effect that a petition for adoption had been filed, did not end the district court's jurisdiction. In re N.C.L., 89 N.C. App. 79, 365 S.E.2d 213, cert. denied, 322 N.C. 481, 370 S.E.2d 226 (1988).

Quoted in In re James S., 86 N.C. App. 364, 357 S.E.2d 430 (1987).

Stated in In re Peirce, 53 N.C. App. 373, 281 S.E.2d 198 (1981).

§ 7A-587. Parent's right to counsel.

In cases where the juvenile petition alleges that a juvenile is abused, neglected or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. In no case may the judge appoint a county

attorney, prosecutor or public defender. (1979, c. 815, s. 1; 1981, c. 469, s. 14.)

Legal Periodicals. — For survey of 1979 constitutional law, see 58 N.C.L. Rev. 1326 (1980). For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

CASE NOTES

Counsel Not Required in Every Termination Proceeding. — It cannot be said that the Constitution requires the appointment of counsel in every parental termination proceeding; the decision whether due process calls for the appointment of counsel for indigent parents in termination proceedings is to be answered in the first instance by the trial court, subject to appellate review. *Lassiter v. Department of Social Servs.*, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640, rehearing denied, 453 U.S. 927, 102

S. Ct. 889, 69 L. Ed. 2d 1023 (1981).

Adoption as a Consequence of Neglect Proceedings. — Where the signing of the adoption consent forms occurred following and as a consequence of a neglect proceeding which the department of social services initiated, the signing of the papers directly related to the neglect proceedings and respondent was entitled to counsel when she signed the forms. *In re Maynard*, 116 N.C. App. 616, 448 S.E.2d 871 (1994).

§ 7A-588. Payment of court appointed attorney or guardian ad litem.

An attorney or guardian ad litem appointed pursuant to G.S. 7A-584, 7A-586 or 7A-587 of this Article, pursuant to any other provision of the Juvenile Code, or pursuant to G.S. 7A-289.23 shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts. The judge may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2 and 7A-450.3. In no event shall the parent or guardian be required to pay the fee for an appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21. (1979, c. 815, s. 1; 1983, c. 726, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 1090, s. 6; 1991, c. 575, s. 1.)

CASE NOTES

Cited in *In re Wharton*, 54 N.C. App. 447, 283 S.E.2d 528 (1981).

§§ 7A-589 through 7A-593: Reserved for future codification purposes.

- 1 (1) Identify the amount and source of funding for legal services and
2 administration in child abuse and neglect and dependency cases in
3 those programs;
- 4 (2) Identify the legal participants involved in child abuse and neglect
5 and dependency court cases and each participant's responsibilities;
- 6 (3) Study the purpose and activities of each program and identify
7 activities that are similar;
- 8 (4) Identify federal mandates and any federal funding that would be
9 affected by any changes in legal services or administration of either
10 program, and determine whether any federal funds are available to
11 fund the Guardian Ad Litem program;
- 12 (5) Review guardian ad litem programs and children's services in
13 other states, including cost-saving measures taken by those states,
14 and identify other methods of administering and funding those
15 programs;
- 16 (6) Identify methods of reducing the costs for attorneys involved in
17 child abuse and neglect and dependency cases;
- 18 (7) Review administrative costs of each program and identify possible
19 cost savings; and
- 20 (8) Determine the extent to which guardian ad litem attorneys are
21 performing duties normally handled by volunteers and identify
22 methods to reduce such practices.
- 23 (b) The Commission may report its findings to the 1996 Regular Session
24 of the 1995 General Assembly.

25
26 Requested by: Representatives Justus, Thompson, Daughtry, Senators Ballance, Rand
27 **CHANGE GUARDIAN AD LITEM APPOINTMENT**

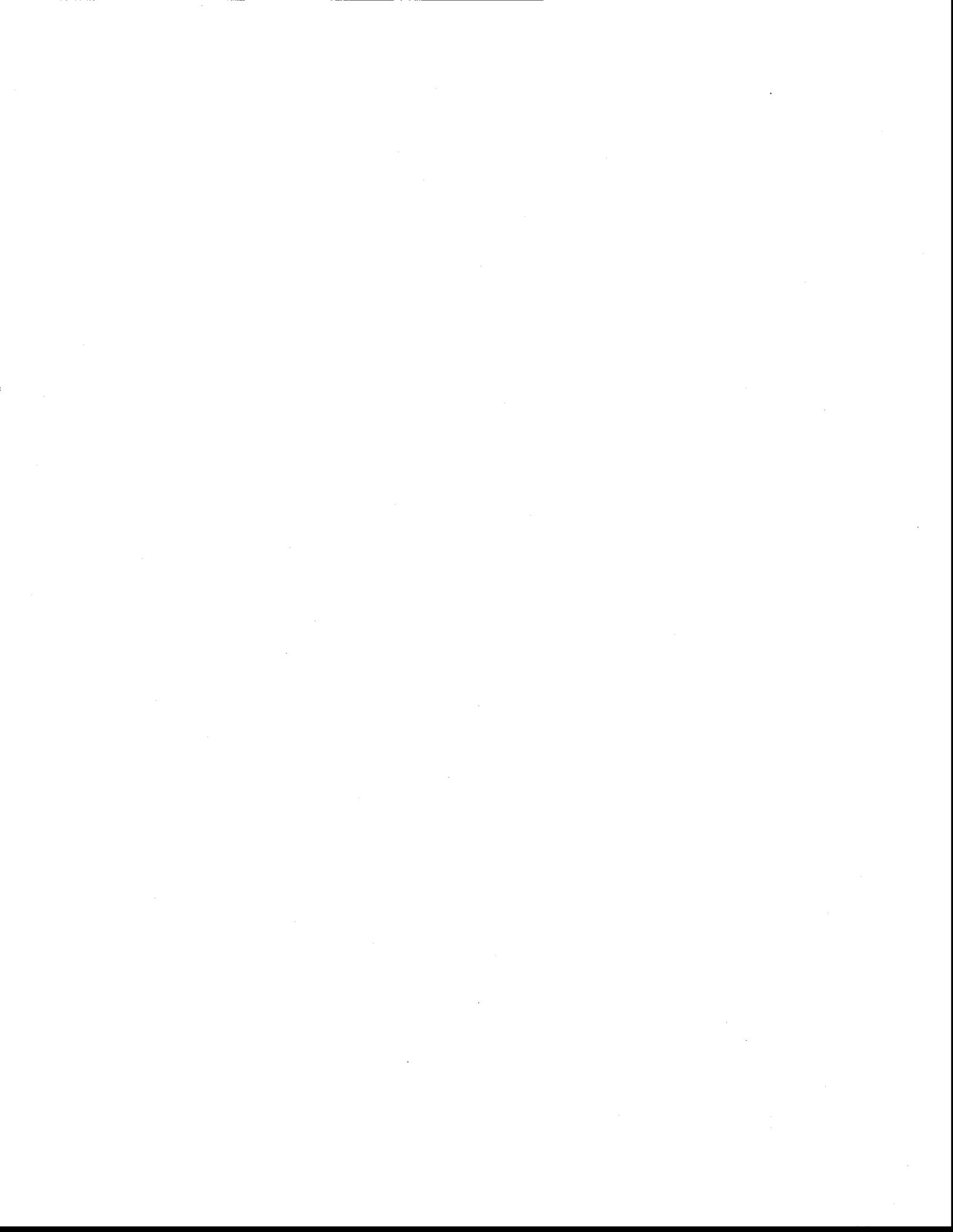
28 Sec. 21.13. G.S. 7A-586(a) reads as rewritten:

29 "(a) When in a petition a juvenile is alleged to be abused or neglected, the judge
30 shall appoint a guardian ad litem to represent the juvenile. When a juvenile is
31 alleged to be dependent, the judge may appoint a guardian ad litem to represent the
32 juvenile. The guardian ad litem and attorney advocate have standing to represent the
33 juvenile in all actions under this Subchapter where they have been appointed. The
34 appointment shall be made pursuant to the program established by Article 39 of this
35 Chapter unless representation is otherwise provided pursuant to G.S. 7A-491 or G.S.
36 7A-492. The appointment shall terminate at the end of two years. Upon motion of
37 any party including the guardian ad litem, or upon the judge's own motion, the
38 guardian ad litem may be reappointed upon a showing of good cause. In every case
39 where a nonattorney is appointed as a guardian ad litem, an attorney shall be
40 appointed in the case in order to assure protection of the child's legal rights ~~within~~
41 ~~the proceeding.~~ through the dispositional phase of the proceedings, and after
42 disposition when necessary to further the best interests of the child. The duties of the
43 guardian ad litem program shall be to make an investigation to determine the facts,
44 the needs of the juvenile, and the available resources within the family and
45 community to meet those needs; to facilitate, when appropriate, the settlement of
46 disputed issues; to offer evidence and examine witnesses at adjudication; to explore
47 options with the judge at the dispositional hearing; and to protect and promote the
48 best interest of the juvenile until formally relieved of the responsibility by the judge."

49
50 Requested by: Representatives Holmes, Creech, Esposito, Senators Plyler, Perdue,

51 Odom

52 **N.C. STATE BAR FUNDS**



SESSION 1997

H

D

HOUSE JOINT RESOLUTION 97-LN-007
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Sponsors: .

Referred to:

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO CONTINUE ITS STUDY OF THE GUARDIAN AD PROGRAM.

3 Be it resolved by the House of Representatives, the Senate
4 concurring:

5 Section 1. The Legislative Resesearch Commission may
6 continue its study of the Guardian Ad Litem program administered
7 by the Administrative Office of the Courts. The study shall
8 include the following:

- 9 (1) Whether the attorney representing the county
10 department of social services may have a conflict
11 of interest in representing both the department and
12 the abused and neglected child;
- 13 (2) Ways to improve case management in the court
14 process so as to reduce attorney time spent on the
15 case and time spent by volunteers and others
16 waiting for the case to be heard;
- 17 (3) Evaluation of the efficiency, sufficiency, and
18 effectiveness of the legal representation and
19 advocacy provided to children served by the
20 guardian ad litem program;
- 21 (4) Whether the attorney appointed to represent parents
22 may be relieved of the duty to represent when
23 parents have dropped out of the case or failed to
24 appear at a hearing due to lack of interest;

- 1 (5) Continued review of the program to determine if
2 additional cuts in State funds should be made;
3 (6) Review the impact of additional government or
4 private funds received by the program; and
5 (7) Whether the name of the program should be changed
6 to avoid confusion with guardians ad litem
7 appointed in proceedings other than abuse and
8 neglect cases.

9 Section 2. The Legislative Research Commission may make
10 an interim report to the 1997 General Assembly, 1998 Regular
11 Session, and shall make a final report to the 1999 General
12 Assembly.

13 Section 3. This resolution is effective upon adoption.

